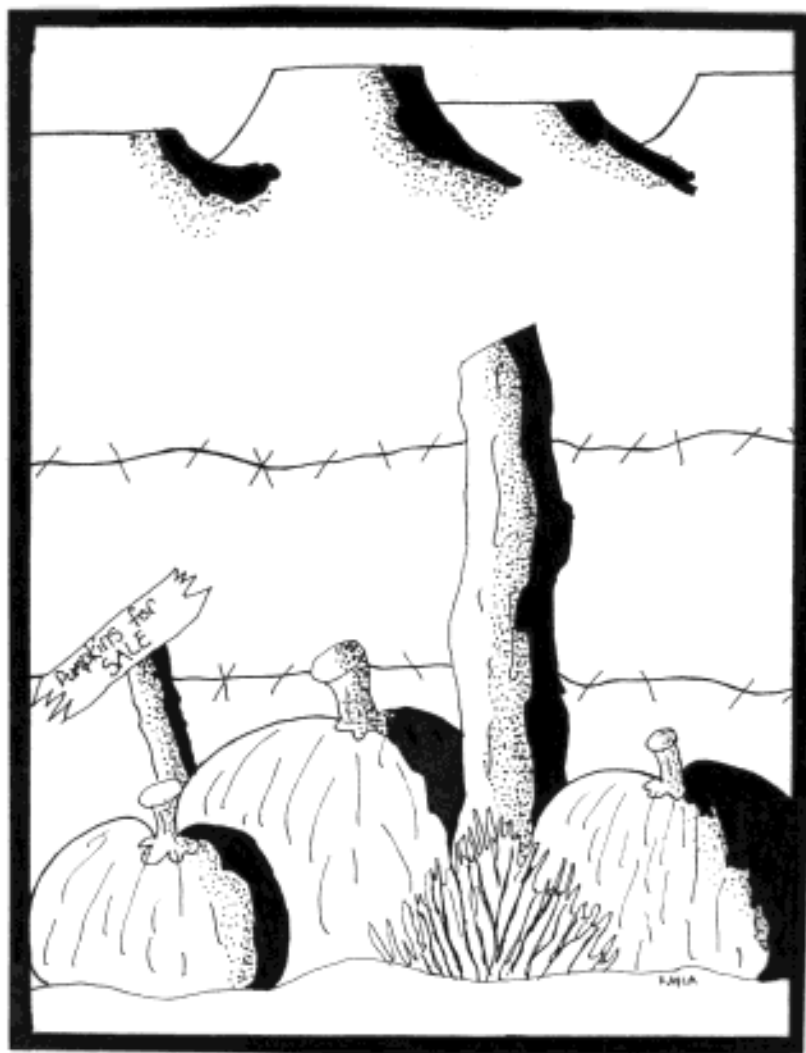


# TEXAS REGISTER

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**6th Grade**

**Vega Elementary**

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# ATTORNEY GENERAL

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Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

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## Request for Opinions

**RQ-1001.** Requested from the Honorable Bruce Isaacks, Criminal District Attorney, Carroll Courts Building, 5th Floor, P.O. Box 2344, Denton, Texas 76202, concerning whether a release that obligates a county to indemnify a third party only for damages arising from acts of the county and does not expand the countys liability beyond its liability under existing law creates a debt within the meaning of article XI, section 7 of the Texas Constitution.

**RQ-1002.** Requested from the Honorable Steven D. Wolens, Chair, Committee on State Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether Harris County must hold a referendum election before imposing certain taxes authorized by House Bill 92, Acts 1997, 75th Legislature, Chapter 551, at 1929.

**RQ-1003.** Requested from the Honorable Jose R. Rodriguez, El Paso County Attorney, 500 East San Antonio, Room 203, El Paso, Texas 79901, concerning whether Article 37.122, Education Code, prohibits the sale of alcoholic beverages for nonschool events held at a student activities complex owned by an independent school district.

**RQ-1004.** Requested from the Honorable Jerry Patterson, Chair, Committee on Veteran Affairs and Military Installations Texas House

of Representatives, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether a person who has served a probated sentence and whose civil rights have been restored is eligible for a pardon.

**RQ-1005.** Requested from the Honorable Lawrence E. Heffington, Henderson County Attorney, Courthouse Square, Athens, Texas 75751, concerning whether the judge of the 392nd District Court is a member of the Henderson County Juvenile Board, and related question.

**RQ-1006.** Requested from the Honorable John Whitmire, Chair, Criminal Justice Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning Remedy for clerical errors made in connection with individual accounts in the Texas Municipal Retirement System, and related questions.

**RQ-1007.** Requested from the Honorable Jerome Aldrich, Brazoria County Criminal District Attorney, 111 East Locust, Room 408A, Angleton, Texas 77515, concerning whether the City of Freeport may exercise certain zoning powers in man-made canals below high tide, under the provisions of Chapter 211, Local Government Code.

TRD-9713837

# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 20. Cotton Pest Control

##### Subchapter C. Stalk Destruction Program

###### 4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction date for Pest Management Zone 3, Areas 1 and 2. The department is amending an emergency amendment to §20.22 which was filed on September 30, 1997, and published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10201.)

The department is acting on behalf of cotton farmers in Zone 3, Area 1, which includes Jackson and Matagorda counties and that portion of Wharton County west of the Colorado River, and Zone 3, Area 2, which includes Austin, Brazoria, and Fort Bend counties and that portion of Wharton County east of the Colorado River.

The current cotton destruction deadline is October 15 in both areas. The cotton destruction deadline will be extended through October 30 for both these areas. The department believes that changing the cotton destruction date is both necessary and appropriate. In a previous emergency filing, the department extended the destruction deadline for Zone 3, Area 1, and Calhoun and Victoria counties only in Zone 2, Area 4, from October 1 to October 15. That amendment and this filing are effective only for the 1997 crop year. The October 15, 1997 deadline is not changed for Calhoun and Victoria counties.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction dates for all counties in Pest Management Zone 3, Areas 1 and 2. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the October 15 deadline. A failure to act to extend the cotton destruction deadlines could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the dates for cotton destruction through October 30 of this year for Zone 3, Area 1, which includes Jackson and Matagorda counties and that portion of Wharton County west of the Colorado River, and for Zone 3, Area 2 which consists of Austin, Brazoria, and Fort Bend and that portion of Wharton County east of the Colorado River.

The amendment is adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

###### §20.22. *Stalk Destruction Requirements.*

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:

Figure: 4 TAC §20.22(a)

(b) - (c) (No change.)

Issued in Austin, Texas, on October 14, 1997.

TRD-9713621

Delores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: October 14, 1997

Expiration date: November 3, 1997

For further information, please call: (512) 463-7541

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# PROPOSED RULES

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Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## **TITLE 1. ADMINISTRATION**

### **Part X. Texas Department of Information Resources**

#### **Chapter 201. Planning and Management of Information Resources Technologies**

##### **1 TAC §201.2**

The Department of Information Resources proposes new §201.2, concerning complaints.

The new section requires the department to notify consumers and service recipients of the name, mailing address, and telephone number of an identified employee of the department for the purpose of directing complaints to the department. The new section is proposed in accordance with Texas Government Code, §2054.035(c), which requires the board of the department by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

Mr. Edward Serna, director of the Oversight Operations Division, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the section.

Mr. Serna has also determined that for each year of the first five years the proposed section will be in effect, there will be a benefit to the public in that consumers and recipients of the department's services will be better informed as to how they may submit complaints to the department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to C. J. Brandt, Jr., General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5:00 p.m.,

within 30 days after publication. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The new section is proposed under Texas Government Code, §2054.035(c), which requires the department to adopt rules regarding methods of notifying consumers and service recipients of the name, mailing address and telephone number of the department for the purpose of directing complaints to the department.

Texas Government Code, §2054.035 is affected by the proposed section.

##### *§201.2. Complaints.*

Consumers and recipients of the department's services and persons contracting with the department shall be provided notice of the name, mailing address and telephone number of an identified employee of the department for the purpose of directing complaints to the department. Notice to such consumers, service recipients or persons contracting with the department shall be provided via the world wide web at the following location: <http://www.dir.state.tx.us>. In addition, notice to such consumers, service recipients or persons contracting with the department shall be provided by one or more of the following methods and shall be effective if provided by any of the following methods:

- (1) By written notice placed on, attached to, or enclosed with each invoice, billing statement, contract or agreement between the department and consumers, service recipients or persons contracting with the department.

- (2) By posting written notice at locations on the department's premises accessible to the department's consumers, service recipients and persons contracting with the department.

- (3) By written notice from the executive director of the department to the director of all state agencies or local governments that are consumers, service recipients or persons contracting with the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713856

## TITLE 7. BANKING AND SECURITIES

### Part VI. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

##### General Rules

###### 7 TAC §91.103

The Texas Credit Union Commission proposes new §91.103 concerning the public notice of the Department's activities. The proposed rule is necessary to comply with new statutory requirements enacted in the 75th Legislative Session. Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.402), requires the Commission to adopt rules relating to providing the public with notice of department activities. The proposed new rule requires the Department to publish in the Texas Register and the Department Newsletter certain applications submitted for approval.

Lynette Pool-Harris, Deputy Commissioner, has determined that there will be no fiscal implication as a result of enforcing or administering the proposed rule.

Lynette Pool-Harris, Deputy Commissioner, has determined that for each year of the first five-year period the rule is in effect: (a) The public benefits anticipated, as a result of the notice being given, will be to ensure the public is informed of matters pending before the Department. (b) There is no economic cost anticipated to the parties who are required to comply with the rule. (c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed rule must be submitted within 30 days after publication of the proposed section in the Texas Register to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The amendment is proposed under the provisions of Section 15.402 of the Texas Finance Code, which authorizes the commission to adopt reasonable rules, and Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.402), which requires the Commission to provide public notice of Department activities.

The specific section affected by this proposed rule is Texas Finance Code, Section 15.402.

###### §91.103. *Public Notice of Department Activities*

(a) Upon receipt of a complete application for authorization to be granted by the department, the commissioner shall cause notice of such application to be published in the Texas Register and the department newsletter. Notice shall be published in both publications at least 30 days prior to taking action on the request. The activities covered by this requirement are:

(1) an application for incorporation under Section 122.001;

(2) a request for an amendment to a credit union's Articles of Incorporation or an expansion of the Credit Union's field of membership under Section 122.011;

(3) an application for merger or consolidation under Section 122.152;

(4) a request by a foreign credit union to do business in Texas under Section 122.013; and

(5) an application for conversion of a credit union's Charter under Sections 122.201, 122.202 or 122.203.

(b) In an emergency or when there is an urgent public necessity, the notice of application shall be published in each publication at the earliest feasible time. The department shall identify the emergency or urgent public necessity in the notice.

(c) An emergency or urgent public necessity exists if immediate action is required of the department because of:

(1) an imminent threat to the public welfare, or

(2) a reasonably unforeseeable situation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713676

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 837-9236

### Loans

###### 7 TAC §91.705

The Texas Credit Union Commission proposes an amendment to § 91.705 concerning loans to credit union officials. The amendment is being proposed to increase the dollar amount of secured credit a credit union may extend to one of its officials without seeking prior approval from the board of directors, and to set a limit on the aggregate amount of loans to officials a credit union may have outstanding at any one time. The proposed amendment would allow the credit union to apply to the commissioner for a waiver from the aggregate limit, and would also establish reporting requirements. The amendment is necessary to give due consideration to the current economic climate and its effect on collateral values, while at the same time preserving a credit union's ability to meet the loan demands of its members.

Lynette Pool-Harris, Deputy Commissioner, has determined that there will be no fiscal implications as a result of enforcing or administering the proposed rule.

Lynette Pool-Harris, Deputy Commissioner, has determined that for each year of the first five years the rule proposed is in effect: (a) The public benefits anticipated as a result of enforcing the rule as proposed will be that state-chartered credit unions will be better able to meet the credit needs of all of its members. (b) There is no economic cost anticipated to the parties who



are required to comply with the rule. (c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed rule must be submitted within 30 days after publication of the proposed section in the Texas Register to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of Sections 124.201 and 124.202 of the Texas Finance Code, which provide the Credit Union Commission with the authority to establish, by rule, lending conditions and limits for loans to directors, employees, and credit committee members.

The specific section affected by this proposed amendment is Texas Finance Code, Section 124.202.

*§91.705. Loans to Officials.*

(a) The rates, terms, conditions, and availability of any loan or extension of credit made to, or endorsed or guaranteed by, a director, employee, loan officer, credit manager, members of the credit committee or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, employee, loan officer, credit manager, members of the credit committee or members of their immediate families, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans or extensions of credit to any one person, the person's business interests, and members of the person's immediate family is greater than \$25,000 if unsecured credit or [\$50,000] **\$75,000** if secured credit, plus pledged shares and deposits. A loan secured by a lien on improved residential real estate which is the homestead and is actually occupied by the borrower shall not be subject to, or included in the aggregate amounts included in this section.

(c) For purposes of this section, the term immediate family member includes a spouse or other family member living in the same household.

**(d) The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by a director, committee member, senior executive staff, and immediate family members of any such individual shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.**

**(e) The president shall make a report to the board of directors on all loans approved since the previous board meeting for any director, committee member, senior executive staff or immediate family members of such individual. The report shall consist of at least the official's loan number, the amount of the loan, purpose of the loan, aggregate amount of indebtedness to the credit union and a statement regarding compliance with loan policies. The board of directors must review this loan approval report at each regular monthly board meeting.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713677

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 837-9236

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## Chapter 97. Commission Policies and Administrative Rules

### General Provisions

#### 7 TAC §97.103

The Texas Credit Union Commission proposes new §97.103 concerning recusal and disqualification of commission members. The proposed rule is necessary to comply with new statutory requirements enacted in the 75th Legislative Session. Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.208), requires the Commission to adopt rules governing the procedures relating to recusal of members. The proposed new rule requires a member who has a personal or private interest in a matter to disqualify him- or herself from any participation in the decision.

Lynette Pool-Harris, Deputy Commissioner, has determined that there will be no fiscal implication as a result of enforcing or administering the proposed rule.

Lynette Pool-Harris, Deputy Commissioner, has determined that for each year of the first five-year period the rule is in effect: (a) The public benefits anticipated, as a result of enforcing the rule as proposed will be to ensure more uniform guidelines for the recusal and disqualification of commission members. (b) There is no economic cost anticipated to the parties who are required to comply with the rule. (c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed rule must be submitted within 30 days after publication of the proposed section in the Texas Register to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The amendment is proposed under the provisions of Section 15.402 of the Texas Finance Code, which authorizes the commission to adopt reasonable rules, and Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.208), which requires the Commission to promulgate recusal rules.

The specific section affected by this proposed rule is Texas Finance Code, Section 15.208.

*§97.103. Recusal Or Disqualification Of Commission Members*

(a) A commission member who has a personal or private interest in a matter pending before the commission may not vote or otherwise participate in the deliberation or decision of the matter.

(b) The term "personal or private interest shall be given the meaning as prescribed in Texas Government Code, Section 572.058, and includes a direct personal or financial interest in a credit union which is the subject of commission action.

(c) A commission member who has a personal or private interest in a matter pending before the commission shall publicly

disclose the fact to the commission in a meeting called and held in compliance with the Open Meetings Act, Texas Government Code, Chapter 551. The disclosure shall be entered in the minutes of the meeting.

(d) A commission member who is recused or disqualified will be counted in determining a quorum.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713678

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 837-9236

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## General Provisions

### 7 TAC §97.106

The Texas Credit Union Commission proposes new §97.106 concerning the methods by which members of credit unions are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The proposed rule is necessary to comply with new statutory requirements enacted in the 75th Legislative Session. Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.409), requires the Commission to adopt rules governing the methods by which credit union members will be notified that they may file complaints with the department. The proposed rule requires the Department to provide credit unions with a prescribed notice to be posted in the lobby of all credit union offices.

Lynette Pool-Harris, Deputy Commissioner, has determined that there will be no fiscal implication as a result of enforcing or administering the proposed rule.

Lynette Pool-Harris, Deputy Commissioner, has determined that for each year of the first five-year period the rule is in effect: (a) The public benefits anticipated, as a result of the notice being given, will be to ensure the public is informed that the department is available to assist credit union members with their questions and concerns regarding a credit union under the jurisdiction of the department. (b) There is no economic cost anticipated to the parties who are required to comply with the rule. (c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed rule must be submitted within 30 days after publication of the proposed section in the Texas Register to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The amendment is proposed under the provisions of Section 15.402 of the Texas Finance Code, which authorizes the commission to adopt reasonable rules, and Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.402), which requires the Commission to establish methods by which

credit union members are notified of the presence of the department.

The specific section affected by this proposed rule is Texas Finance Code, Section 15.402.

### §97.106. Complaint Notice

(a) Every credit union shall conspicuously post, in its principal place of business and all other offices and service facilities, a public notice which provides the name, address, and telephone number of the department. The notice shall further inform members that complaints to the department may be directed to that address or telephone number.

(b) The notice shall be printed in at least 14-point type or larger, and shall be clearly visible in a public entrance or lobby area. The commissioner shall prescribe the design and content of the notice to be used for this purpose.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713679

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 837-9236

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## TITLE 19. EDUCATION

### Part VII. State Board for Educator Certification

#### Chapter 230. Professional Educator Preparation and Certification

#### Subchapter A. Assessment of Educators [Educator Preparation Accountability System]

#### 19 TAC §§230.1-230.4

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The State Board for Educator Certification proposes the repeal of §§230.1-230.4, concerning educator preparation accountability system. The repeals are necessary because new rules on the accountability system for educator preparation will be proposed in new 19 TAC Chapter 229 at a later date.

Dr. Mark Littleton, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Littleton and Stephanie Korcheck also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more current regulations regarding the accountability

system for educator preparation. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pamela Tackett, Director of Assessment and Accountability, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The repeals are proposed under Texas Education Code (TEC), Chapter 21, Subchapter B, §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the continuing accountability of all educator preparation programs.

The following are affected by the proposed repeals: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995, Texas General Laws 2207, 2499-2500 and TEC, Chapter 21, Subchapter B, §21.045.

§230.1. *General Provisions.*

§230.2. *Purpose of Institutional Accountability System.*

§230.3. *Criteria for Institutional Accountability.*

§230.4. *The Accreditation Process.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713925

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 469-3012



## Subchapter M. Certification of Educators in General

### 19 TAC §230.414

The State Board for Educator Certification proposes an amendment to §230.414, concerning certificates for persons with criminal backgrounds. The net effect of the amendment is to move the current provision governing discipline of applicants or certificate holders with criminal backgrounds to the newly proposed 19 TAC Chapter 249, concerning disciplinary proceedings and sanctions. In transferring the current rule, the SBEC has proposed two minor changes: (1) language has been added to provide reasons for why certain crimes are considered to relate to the education profession and (2) the statutory citation to the Texas Controlled Substances Act has been updated.

Dr. Mark Littleton, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Littleton and Stephanie Korcheck also have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more comprehensive regulations concerning certain crimes and the education profession. There will be no effect on small businesses. There are no anticipated economic costs

to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The amendment is proposed under the Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048, 21.050, and 22.082 which requires the State Board for Educator Certification to propose rules that establish the academic, internship, and examination requirements for all candidates for certification; specify the classes of certificates offered; and to obtain all criminal history information that relates to an applicant for certification and Texas Revised Civil Statutes, Articles 6252-13c and 6252-13d, which require the SBEC to issue and publish guidelines for denying or sanctioning an educator certificate on the basis of criminal conviction

The following are affected by the proposed amendment: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995 Texas General Laws 2207, 2499-2500 and 19 TAC Chapter 249.

§230.414. *Certificates for Persons with Criminal Backgrounds.*

[(a) Under Texas Civil Statutes, Article 6252-13c, the commissioner of education may suspend or revoke a certificate or the State Board for Educator Certification (SBEC) may refuse to issue a certificate to a person convicted of a felony or misdemeanor crime that directly relates to the duties and responsibilities of the education profession.]

[(b) A crime may be considered to relate directly to the duties and responsibilities of the education profession when:]

[(1) the crime involves moral turpitude; ]

[(2) the crime involves any form of sexual or physical abuse of a minor or student or other illegal conduct with a minor or student; ]

[(3) the crime involves conduct affecting students, parents of students, fellow employees, or professional colleagues;]

[(4) the facts underlying the crime would support a felony conviction for possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Texas Civil Statutes, Article 4476-15;]

[(5) the crime involves school property or funds;]

[(6) the crime involves any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;]

[(7) the crime occurs wholly or in part on school property or at a school-sponsored activity; or]

[(8) two or more crimes are committed within any 12-month period that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct.]

[(c) Before a certificate may be denied under this section, the SBEC shall notify the applicant in writing of the intent to deny the certificate and the reasons for the denial, and the applicant shall have an opportunity to be heard. The SBEC's initial denial of a certificate may be appealed. Hearings under this subchapter will be subject to the rules governing hearings before the commissioner of education in Chapter 157, Subchapter AA of this title (relating to General Provisions for Hearings before the Commissioner of Education).]

[(d) The procedure for suspension and revocation of a certificate or permit under this section shall comply with Chapter 157 of this title (relating to Hearings and Appeals).]

[(e)] Upon paying the fee for a provisional or professional teacher certificate, an individual academically qualified to teach in the public schools of this state may be certified under this subsection to serve as a teacher only in a correctional facility operated by an agency or political subdivision of the state.

(1) An entity operating a correctional facility under contract with the state or a political subdivision of the state shall be deemed an agency or political subdivision of the state under this rule.

(2) Any certificate issued under this subsection shall contain and prominently exhibit express language limiting the validity of the certificate to correctional facilities only.

(3) An individual who is incarcerated in a correctional facility operated by an agency or political subdivision of the state shall be ineligible for certification under this subsection for the period of incarceration.

(4) This subsection does not supersede Texas Department of Criminal Justice policy related to employment of personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713926

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 469-3012



## Subchapter Q. Permits

### 19 TAC §230.512

The State Board for Educator Certification proposes new §230.512, concerning emergency certificates. This rule reflects an interim change to existing rules on emergency permits until a new certification system can be developed. The new rule aligns current 19 TAC, Chapter 230, Subchapter Q (regarding permits) with language contained in Texas Education Code (TEC) Chapter 21, Subchapter B, §21.041(b)(2). The emergency certificate allows the district to fill vacancies with a qualified individual when certified individuals are not available.

Dr. Mark Littleton, executive director, has determined that for the first five-year period the section is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The district pays \$75 for each permit. Of the \$75 for each permit, the education service center receives \$52.50 and SBEC receives \$22.50. Under the contract with SBEC, the education service center is guaranteed \$8,500 to support certification functions at the ESC. Depending on the number of permits processed by the ESC, the ESC may receive more than the minimum of \$8,500.

Dr. Littleton and Stephanie Korcheck also have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will

be allowing the district to fill vacancies with a qualified individual when certified individuals are not available. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ron Kettler, Director of Educator Preparation and Certification, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The new rule is proposed under Texas Education Code (TEC), Chapter 21, Subchapter B, §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be issued including emergency certificates.

The following are affected by the proposed new rule: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995 Texas General Laws 2207, 2499-2500 and TEC, Chapter 21, Subchapter H.

### §230.512. Emergency Certificates.

The permits contained in this Subchapter fulfill the provision stated in the Education Code, §21.041(b)(2), concerning emergency certificates until rules relating to new classes of emergency certificates are adopted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dr. Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3012



## Chapter 244. Certificate of Completion of Training for Appraisers

### 19 TAC §§244.1-244.4

The State Board for Educator Certification proposes new §§244.1-244.4, concerning certificate of completion of training for appraisers. The new rules are necessary so that educators will be assured that appraisers have been trained to understand and implement an appraisal process.

Dr. Mark Littleton, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Littleton and Stephanie Korcheck also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be assurance that appraisers are well qualified to implement an appraisal process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pamela Tackett, Director of Assessment and Accountability, State Board

for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The new sections are proposed under the Texas Education Code (TEC), Chapter 21, Subchapter B, §21.041(b)(10), which requires the State Board for Educator Certification to propose rules providing for the certification of persons performing appraisals under TEC Chapter 21, Subchapter H.

The following are affected by the proposed new sections: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995 Texas General Laws 2207, 2499-2500 and TEC, Chapter 21, Subchapter H.

*§244.1. General Provisions.*

(a) The State Board for Educator Certification is responsible for ensuring the certification of appraisers performing appraisal of teachers, administrators, and counselors employed in Texas public schools.

(b) The appraisal process for teachers is outlined in Texas Education Code (TEC) Chapter 21, Subchapter H, and Chapter 15 of this title (relating to Commissioner of Education Rules Concerning Teacher Appraisal). Appraisal systems that may be used for appraising teachers are either recommended by the Commissioner of Education or locally developed and adopted by a school district according to the Commissioner's rules.

*§244.2. Conditions for Issuing a Certificate of Completion of Training for Appraisers of Teachers.*

(a) Each regional education service center is responsible for maintaining documentation of training for all individuals completing appraiser training to appraise teachers. The content of the training and the criteria for acceptable performance of the appraiser are established by the Commissioner of Education if the training is provided to implement the Commissioner's Recommended Appraisal System or by a public school district if a locally-developed system is implemented.

(b) The SBEC will recognize individuals who have successfully completed appraiser training as provided by the regional education service center or by school districts, as appropriate. The providers of training are responsible for issuing a certificate denoting completion of training.

*§244.3. Training for Appraisers in Districts Using Locally-Developed Teacher Appraisal Systems.*

A district must have a clearly defined set of procedures for training appraisers. The district must identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of teachers. The district shall be responsible for documenting that appraisers have met training criteria established by the school district.

*§244.4. Certification of Appraisers of Administrators or Counselors.*

(a) A person who holds a certificate of one of the following classifications listed in this subsection, or who occupies a position that requires such a certification, is certified to appraise the performance of a counselor or an administrator other than the superintendent: superintendent; administrator; mid-management; principal; or assistant-principal. Each district shall assign one or more appraisers for each counselor or administrator, other than the superintendent, as the district considers appropriate.

(b) An uncertified person designated by the local school district may appraise the performance of an administrator in an area

for which certification is not required, including personnel, business, accounting, planning, and research.

(c) The board of trustees may appraise the performance of the superintendent. Certification is not necessary for this purpose.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713928

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 469-3012

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## Chapter 247. Educators' Code of Ethics

### 19 TAC §247.1, §247.2

The State Board for Educator Certification proposes new §247.1 and §247.2, concerning educators' code of ethics. The proposed educators' code of ethics would promote high standards of ethical conduct for the education profession. The proposed rules clearly state principles of conduct for each major area of an educator's responsibilities and supplements each principle with exemplary standards to guide the educator in applying them. The proposed ethics code is based on the current one, which was approved by a referendum vote of the profession. As a result, the proposed ethics code encourages compliance and enhances enforceability because educators themselves believe they should follow and be held accountable for these standards of conduct.

Dr. Mark Littleton, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Littleton and Stephanie Korcheck also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to promote high standards of ethical conduct for the education profession. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603.

The new rules are proposed under TEC §21.041(b)(8) which requires the SBEC to propose rules that provide for the adoption, amendment, and enforcement of an educator's code of ethics. Senate Bill 1, §63(h) (74th Legislature) requires the SBEC by November 1, 1997, to propose rules relating to certification sanctions and other rules the SBEC must propose under Texas Education Code (TEC), Chapter 21, Subchapter B.

The following are affected by the proposed new rules: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995 Texas General Laws 2207, 2499-2500 and 19 TAC, Chapter 249 and 19 TAC §177.1.

#### §247.1. *Purpose and Scope.*

In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (the board) adopts an educators' code of ethics as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The board may amend the ethics code in the same manner as any other formal rule. The board is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings, pursuant to chapter 249 of this title (relating to Disciplinary Proceedings and Sanctions).

#### §247.2. *Code of Ethics and Standard Practices for Texas Educators.*

(a) Professional responsibility. The Texas educator should strive to create an atmosphere that will nurture to fulfillment the potential of each student. The educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community. In conscientiously conducting his or her affairs, the educator shall exemplify the highest standards of professional commitment.

(b) Principle I: Professional ethical conduct. The Texas educator shall maintain the dignity of the profession by respecting and obeying the law, demonstrating personal integrity, and exemplifying honesty.

(1) Standard 1. The educator shall not intentionally misrepresent official policies of the school district or educational institution and shall clearly distinguish those views from personal attitudes and opinions.

(2) Standard 2. The educator shall honestly account for all funds committed to his or her charge and shall conduct financial business with integrity.

(3) Standard 3. The educator shall not use institutional or professional privileges for personal or partisan advantage.

(4) Standard 4. The educator shall accept no gratuities, gifts, or favors that impair professional judgment.

(5) Standard 5. The educator shall not offer any favor, service, or thing of value to obtain special advantage.

(6) Standard 6. The educator shall not falsify records, or direct or coerce others to do so.

(c) Principle II: Professional practices and performance. The Texas educator, after qualifying in a manner established by law or regulation, shall assume responsibilities for professional administrative or teaching practices and professional performance and shall demonstrate competence.

(1) Standard 1. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications and shall adhere to the terms of a contract or appointment.

(2) Standard 2. The educator shall not deliberately or recklessly impair his or her mental or physical health or ignore social prudence, thereby affecting his or her ability to perform the duties of his or her professional assignment.

(3) Standard 3. The educator shall organize instruction that seeks to accomplish objectives related to learning.

(4) Standard 4. The educator shall continue professional growth.

(5) Standard 5. The educator shall comply with written local school board policies, state regulations, and other applicable state and federal laws.

(d) Principle III: Ethical conduct toward professional colleagues. The Texas educator, in exemplifying ethical relations with colleagues, shall accord just and equitable treatment to all members of the profession.

(1) Standard 1. The educator shall not reveal confidential information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

(2) Standard 2. The educator shall not willfully make false statements about a colleague or the school system.

(3) Standard 3. The educator shall adhere to written local school board policies and state and federal laws regarding dismissal, evaluation, and employment processes.

(4) Standard 4. The educator shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities.

(5) Standard 5. The educator shall not discriminate against, coerce, or harass a colleague on the basis of race, color, religion, national origin, age, sex, disability, or family status.

(6) Standard 6. The educator shall not intentionally deny or impede a colleague in the exercise or enjoyment of any professional right or privilege.

(7) Standard 7. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

(8) Standard 8. The educator shall have the academic freedom to teach as a professional privilege, and no educator shall interfere with such privilege except as required by state and/or federal laws.

(e) Principle IV: Ethical conduct toward students. The Texas educator, in accepting a position of public trust, should measure success by progress of each student toward realization of his or her potential as an effective citizen.

(1) Standard 1. The educator shall deal considerately and justly with each student and shall seek to resolve problems including discipline according to law and school board policy.

(2) Standard 2. The educator shall not intentionally expose the student to disparagement.

(3) Standard 3. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

(4) Standard 4. The educator shall make reasonable effort to protect the student from conditions detrimental to learning, physical health, mental health, or safety.

(5) Standard 5. The educator shall not deliberately distort facts.

(6) Standard 6. The educator shall not unfairly exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, sex, disability, national origin, religion, or family status.

(7) Standard 7. The educator shall not unreasonably restrain the student from independent action in the pursuit of learning or deny the student access to varying points of view.

(f) Principle V: Ethical conduct toward parents and community. The Texas educator, in fulfilling citizenship responsibilities in the community, should cooperate with parents and others to improve the public schools of the community.

(1) Standard 1. The educator shall make reasonable effort to communicate to parents information that lawfully should be revealed in the interest of the student.

(2) Standard 2. The educator shall endeavor to understand community cultures and relate the home environment of students to the school.

(3) Standard 3. The educator shall manifest a positive role in school-public relations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713929

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3012

## Chapter 249. Disciplinary Proceedings and Sanctions

The State Board for Educator Certification proposes new Chapter 249, §§249.1-249.8, 249.20-249.24, 249.30-249.48, 249.60-249.68, and 249.80-249.85, concerning disciplinary proceedings and sanctions. The proposed disciplinary proceedings and sanctions rules provide due process of law to the parties in accordance with Administrative Procedure Act (APA) at the least possible cost to them and to the state. The proposed rules also ensure that criminal convictions used as the basis for sanctioning applicants and certificate holders are directly related to the duties and responsibilities of being an educator. Under the proposed rules, SBEC staff would be solely responsible for prosecuting disciplinary actions, including those involving an alleged violation of the proposed educator's code of ethics. Anyone, including other educators, may file a complaint with the SBEC staff for them to investigate. Making the SBEC solely responsible for investigating and prosecuting alleged ethics code violations preserves the agency's legal prerogative and obligation to sanction a certificate it has issued. Further, disallowing independent third-party prosecutions by educators or parents keeps the ethics code from being used for purposes of harassment or retaliation unrelated to certification standards of conduct. The proposed rules would have the State Office of Administrative Hearings (SOAH) conduct evidentiary hearings in contested disciplinary cases for SBEC because SOAH provides independent, objective, and competent administrative law judges, who perform their duties in a cost-effective manner. Because the SBEC was established to allow educators to govern themselves and the Board membership appointed to represent the profession, SBEC would be the final decision-maker instead of the SOAH administrative law judge. Further, as a new agency, the SBEC needs to establish precedents for disciplining educators through its decisions in contested cases. The proposed rules give the SBEC flexibility in fashioning sanctions to fit the misconduct proved.

Dr. Mark Littleton, executive director, State Board for Educator Certification, has determined that for the first five-year period the sections are in effect, there will be fiscal implications to state or local government. Using SOAH would cost SBEC about \$80,000 to \$100,000 a year, including contracted court-reporting services.

Dr. Littleton and Stephanie Korcheck also have determined that for the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the due process of law to the parties in accordance with APA at the least possible cost to them and to the state. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dan Junell, General Counsel at State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603, (512) 469-3014.

### Subchapter A. General Provisions

## 19 TAC §§249.1-249.8

The new sections are proposed under the Texas Education Code, §21.041(b)(7) and (8), which requires the SBEC to propose rules that provide for disciplinary proceedings in accordance with the Administrative Procedures Act, including sanctions of an educator certificate, and for the enforcement of an educator's code of ethics. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, allow the SBEC to sanction an educator's certificate on the basis of a criminal conviction but require the agency to publish guidelines relating to the actual practice of this authority. The provisions of this Chapter 249 are issued under the Texas Education Code, §21.031, relating to the board's purpose to regulate and oversee all aspects of the standards of conduct of public school educators; §21.041(b)(7), (8), relating to the board's power and duty to propose rules that provide for disciplinary proceedings, including sanctions, and for the enforcement of an educators' code of ethics; and §21.042, relating to the State Board of Education's review of board rules. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, require the SBEC to issue and publish guidelines for the denial or sanction of an educator certificate on the basis of criminal conviction.

The following are affected by the proposed new sections: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995, Texas General Laws 2207, 2499-2500 and 19 TAC Chapter 247.

### §249.1. *Board's Regulatory Authority.*

This chapter is adopted pursuant to the authority granted to the board and the State Board of Education under the Texas Education Code, §21.031 (relating to the board's purpose to regulate and oversee all aspects of the standards of conduct of public school educators); §21.041(b)(7), (8) (relating to the board's power and duty to propose rules that provide for disciplinary proceedings, including sanctions, and for the enforcement of an educators' code of ethics); and §21.042 (relating to the State Board of Education's review of board rules).

### §249.2. *Applicability.*

(a) In conjunction with other applicable law, this chapter shall govern the procedures for all disciplinary proceedings before the office and the board, including enforcement of the code of ethics. This chapter shall apply to all disciplinary cases docketed for contested-case hearings on or after the effective date of this chapter.

(b) Administrative hearings in contested cases conducted by the office shall be conducted in accordance with the Administrative Procedure Act (APA), this chapter, and other applicable law. This chapter adopts for all purposes the provisions of the Texas Rules of Civil Evidence and the Texas Rules of Civil Procedure. The Rules of Civil Evidence and Civil Procedure will prevail unless expressly limited or modified by the APA or this chapter.

(c) This chapter does not apply to matters related to the proposal or adoption of board rules under the APA or to internal personnel policies or practices of the executive director or the board.

### §249.3. *Definitions.*

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act - Texas Education Code, Title 2.

Administrative law judge or judge - A person appointed by the chief judge under the Texas Government Code, Chapter 2003.

A majority of the voting members present - A majority of the voting members of the board who are present and voting on the issue at the time the vote is recorded.

APA - The Administrative Procedure Act, Texas Government Code, Chapter 2001.

Applicant - A party seeking admission to an educator preparation program, issuance of a certificate, reinstatement of previously revoked certificate, or removal or modification of disciplinary restrictions placed on a certificate by the board.

Authorized representative - An attorney authorized to practice law in the State of Texas or, as allowed by this chapter, a person designated by a party to represent the party.

Board - The State Board for Educator Certification.

Board('s) headquarters - The main offices of the board's executive director and staff located in Austin.

Board member(s) - One or more of the members of the board, appointed and qualified under the Act, §21.033.

Certificate - The whole or part of any certificate, permit, approval, endorsement, or similar form of permission issued by the executive director or the board.

Certificate holder - A person required to hold a certificate under the Act.

Certificate requirement - Any requirement, obligation, condition, or prerequisite prescribed by law, the board, or the executive director for the issuance of a certificate, including items such as required examinations, course transcripts, recommendations, information, or other documentation related to certification.

Chair - The presiding officer of the board, elected pursuant to the Act, §21.036, or other person designated by the chair to act in his or her absence or inability to serve.

Chief judge - The chief administrative law judge of the office.

Contested case - A proceeding under this chapter in which the legal rights, duties, and privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

Conviction - An adjudication of guilt, plea of guilty or no contest, or the imposition of a sentence, including probation or community supervision, for a criminal offense.

Educators' code of ethics, code of ethics, or ethics code - The Code of Ethics and Standard Practices for Texas Educators adopted by the board and currently incorporated as 19 Texas Administrative Code, Chapter 247.

Examinee - A person who registers to take or takes a basic skills examination prescribed by the board for admission to an educator preparation program or a comprehensive examination prescribed by the board for a certificate.

Executive director - The executive director employed by the board pursuant to the Act, §21.039, and other agency employees acting on behalf of the executive director.

Filing - Any written petition, answer, motion, response, other written instrument, or item appropriately filed with the board or the office under this chapter.

Law - The United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions of the board and the commissioner of education.



Office - The State Office of Administrative Hearings.

Party - Each person named or admitted to participate in a contested case under this chapter.

Person - Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government; a person who is the subject of a complaint or investigation and who is subject to disciplinary action under this chapter, including an educator, applicant, or examinee.

Presiding officer or judge - The chair, the acting chair, or an administrative law judge.

Proposal for decision - A proposed decision issued by an administrative law judge in accordance with the APA, §2001.062.

Quorum - A majority of the 12 voting members appointed to and serving on the board; seven board members.

Sanction - A disciplinary action by the board, or a reasonable and lawful punitive measure imposed by the presiding officer against a party, authorized representative, or other participant involved in a disciplinary proceeding, hearing, or other matter under this chapter.

Staff - Employees of the board as a state agency and hired by the executive director.

Two-thirds of the voting members present - Two-thirds of at least a quorum of the voting members of the board who are present and voting on the issue at the time the vote is recorded.

#### §249.4. *Purposes.*

The purposes of this chapter are listed in paragraphs (1)-(6) of this section:

- (1) to regulate and enforce the standards of conduct of educators and applicants;
- (2) to provide for disciplinary proceedings in conformity with the Administrative Procedure Act;
- (3) to adopt and enforce an educators' code of ethics;
- (4) to protect the welfare of Texas schoolchildren and school personnel;
- (5) to ensure educators and applicants are morally fit and worthy to instruct the youth of the state; and
- (6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state.

#### §249.5. *Construction.*

(a) This chapter shall be liberally construed so as to achieve the purposes for which it was adopted, without changing the statutory jurisdiction, powers, or authority of the board.

(b) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

(c) If any provision of this chapter is declared invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter that can be applied without the invalid provision. To that end, the board declares the provisions of this chapter to be severable.

#### §249.6. *Agreements To Be in Writing.*

To be enforceable, an agreement related to a matter under this chapter must be:

(1) reduced to writing and signed by the parties to the agreement or their authorized representatives and appropriately filed; or

(2) dictated into the record during an informal conference or hearing.

#### §249.7. *Ex Parte Communications.*

Subjects, parties, their authorized representatives, or anyone else on a party's behalf shall not communicate or attempt to communicate with any board member regarding a complaint, investigation, or disciplinary proceeding under this chapter, except as allowed by law. The chair may impose sanctions against a violator of this section.

#### §249.8. *Conduct and Decorum.*

(a) Subjects, parties, authorized representatives, witnesses, and other persons involved in a disciplinary proceeding, hearing, or other matter under this chapter shall conduct themselves with proper dignity, courtesy, and respect for the board, executive director, staff, judge, and all other participants. Disorderly conduct shall not be tolerated.

(b) Authorized representatives shall observe the standards of conduct prescribed for their professions.

(c) The presiding officer may impose sanctions against a violator of this section, including barring the person from attending further proceedings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713930

Dr. Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3012



## Subchapter B. Bases of Disciplinary Proceedings and Actions

### 19 TAC §§249.20-249.24

The new sections are proposed under the Texas Education Code, §21.041(b)(7) and (8), which requires the SBEC to propose rules that provide for disciplinary proceedings in accordance with the Administrative Procedures Act, including sanctions of an educator certificate, and for the enforcement of an educator's code of ethics. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, allow the SBEC to sanction an educator's certificate on the basis of a criminal conviction but require the agency to publish guidelines relating to the actual practice of this authority. The provisions of this Chapter 249 are issued under the Texas Education Code, §21.031, relating to the board's purpose to regulate and oversee all aspects of the standards of conduct of public school educators; §21.041(b)(7), (8), relating to the board's power and duty to propose rules that provide for disciplinary proceedings, including sanctions, and for the enforcement of an educators' code of ethics; and §21.042, relating to the State Board of Education's review of board rules. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, require the SBEC to issue and publish guidelines for the denial

or sanction of an educator certificate on the basis of criminal conviction.

The following are affected by the proposed new sections: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995, Texas General Laws 2207, 2499-2500 and 19 TAC Chapter 247.

*§249.20. Denial of Certificate and Disciplinary Action.*

(a) An applicant whose original application for or request for renewal of a certificate is administratively denied shall have 30 days from the date of denial to make a written request for a hearing. Such requests shall be directed to the executive director.

(b) Only the executive director or staff acting on his or her behalf may commence disciplinary proceedings against a certificate holder. Prior to the commencement of disciplinary proceedings against a certificate holder, the person must be given notice of facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law for the retention of the certificate.

(c) At an informal conference offered pursuant to the Administrative Procedure Act, the certificate holder may be represented by a representative of the certificate holder's choice.

(d) The office shall conduct all contested case hearings held under this chapter.

(e) Informal disposition of any disciplinary matter against an subject may be made by stipulation, agreed settlement, consent order, default, or any other disposition not precluded by law.

*§249.21. Forms of Disciplinary Actions.*

(a) Pursuant to this chapter, the board may order the following forms of disciplinary action as listed in paragraphs (1)-(7) of this subsection:

(1) deny permission to take or retake an examination prescribed by board rules or cancel the registration for or scores of such examination;

(2) deny admission to an educator preparation program;

(3) deny the issuance of a certificate;

(4) place restrictions on the issuance or renewal of a certificate, either indefinitely or for a set term;

(5) issue an inscribed or non-inscribed reprimand;

(6) suspend a certificate for a set term; or

(7) revoke a certificate, with or without opportunity for reinstatement.

(b) The board may impose any additional conditions or restrictions upon a certificate that the board deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.

*§249.22. Misconduct Subject to Discipline.*

(a) Staff may obtain and investigate information concerning alleged misconduct by an educator, applicant, or examinee. Based on staff findings and recommendations, disciplinary proceedings may be commenced against the person.

(b) The board may order disciplinary action upon a determination pursuant to this chapter that:

(1) the person is conducting school or education activities in violation of law;

(2) the person is unworthy to instruct or supervise the youth of this state; or

(3) the person has violated a provision of the educators' code of ethics.

(c) The provisions of subsection (b) of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the board.

(d) To efficiently administer and implement the Board's mission under the Texas Education Code and the disciplinary proceedings under this chapter, staff may set priorities for the acceptance and investigation of complaints based on the severity of the matters asserted and the continuing likelihood of harm posed by the subject of a complaint.

*§249.23. Criminal Background.*

(a) Pursuant to Texas Civil Statutes, Article 6252-13c and Texas Education Code, Chapter 22, Subchapter C, the board may take disciplinary action, including denial or revocation of certificate, against a subject convicted of a felony or misdemeanor crime that directly relates to the duties and responsibilities of the education profession.

(b) Subsection (a) of this section applies to a crime that: indicates a threat to the health, safety, or welfare of a student, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. A crime may be considered to relate directly to the duties and responsibilities of the education profession when:

(1) the crime involves moral turpitude;

(2) the crime involves any form of sexual or physical abuse of a minor or student or other illegal conduct with a minor or student;

(3) the crime involves conduct affecting students, parents of students, fellow employees, or professional colleagues;

(4) the facts underlying the crime would support a felony conviction for possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in the Health and Safety Code, Chapter 481;

(5) the crime involves school property or funds;

(6) the crime involves any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(7) the crime occurs wholly or in part on school property or at a school-sponsored activity; or

(8) two or more crimes are committed within any 12-month period that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct.

(c) Pursuant to Texas Civil Statutes, Article 6252-13d, the executive director shall notify the subject in writing of the intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The subject shall have the opportunity to be heard according to the procedures set forth in this chapter.

*§249.24. Disciplinary Considerations.*

(a) The purpose of these guidelines is to achieve the following objectives listed in paragraphs (1)-(3) of this subsection:

(1) provide guidance and a framework of analysis for administrative law judges in preparing proposals for decision in contested disciplinary cases;

(2) promote consistency in the exercise of sound discretion by administrative law judges and the board in proposing or ordering disciplinary actions; and

(3) provide guidance for the resolution of potentially contested matters.

(b) This section shall be construed and applied so as to preserve board members' discretion in taking disciplinary action, enforcing the educators' code of ethics, and otherwise regulating standards of educator conduct pursuant to the Texas Education Code (Act). This section shall be further construed and applied so as to be consistent with the entire Act and shall conform with other laws and board rules.

(c) The following factors listed in paragraphs (1)-(14) of this subsection may be considered in proposing or making a decision for disciplinary action:

(1) the type and severity of actual physical or mental harm to a student;

(2) the severity of economic harm to a student, the parent(s) of a student, school personnel, a school official, school district, or the state;

(3) premeditated or intentional misconduct;

(4) misconduct;

(5) motive;

(6) attempted concealment of misconduct;

(7) prior misconduct of a similar or related nature;

(8) disciplinary or criminal history;

(9) violation of a board order;

(10) prior written reprimands, warnings, or admonishments from any supervisor or governmental agency or official regarding misconduct or violation of laws pertaining to the educator;

(11) likelihood of present harm or potential for continuing harm to students, parents of students, school personnel, or school or certification officials;

(12) terms of probation, community supervision, community service, restitution, or other requirement or condition judicially imposed in connection with a criminal offense;

(13) the likelihood of future misconduct of a similar or related nature as shown by:

(A) lack of remorse;

(B) failure to implement remedial measures to correct or alleviate harm arising from the misconduct; or

(C) lack of rehabilitative motivation or potential; or

(14) any other relevant circumstances or facts that warrant increasing the sanction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

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Dr. Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3012

## Subchapter C. Prehearing Procedures

### 19 TAC §§249.30-249.48

The new sections are proposed under the Texas Education Code, §21.041(b)(7) and (8), which requires the SBEC to propose rules that provide for disciplinary proceedings in accordance with the Administrative Procedures Act, including sanctions of an educator certificate, and for the enforcement of an educator's code of ethics. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, allow the SBEC to sanction an educator's certificate on the basis of a criminal conviction but require the agency to publish guidelines relating to the actual practice of this authority. The provisions of this Chapter 249 are issued under the Texas Education Code, §21.031, relating to the board's purpose to regulate and oversee all aspects of the standards of conduct of public school educators; §21.041(b)(7), (8), relating to the board's power and duty to propose rules that provide for disciplinary proceedings, including sanctions, and for the enforcement of an educators' code of ethics; and §21.042, relating to the State Board of Education's review of board rules. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, require the SBEC to issue and publish guidelines for the denial or sanction of an educator certificate on the basis of criminal conviction.

The following are affected by the proposed new sections: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995, Texas General Laws 2207, 2499-2500 and 19 TAC Chapter 247.

#### §249.30. *Complaints.*

(a) Complaints against an educator, applicant, or examinee must be filed in writing.

(b) The executive director and staff may also obtain and act on other information providing grounds for investigation and possible disciplinary action.

#### §249.31. *Jurisdiction of the Office.*

The office acquires jurisdiction over a contested case when the executive director files the form required by the office for docketing a case.

#### §249.32. *Powers and Duties of Judge.*

(a) The presiding judge shall have the authority and duty to take the following actions listed in paragraphs (1)-(3) of this subsection:

(1) conduct a full, fair, and impartial hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) The judge shall have the power to regulate the course of the proceedings and conduct of the parties and authorized representatives, including the power to perform the following functions listed in paragraphs (1)-(13) of this subsection:

(1) issue orders and rule on motions and issue orders relating to prehearing and hearing matters, including orders imposing sanctions related to a party's or authorized representative's conduct in the proceedings;

(2) rule on discovery issues;

(3) issue subpoenas and commissions;

(4) administer oaths;

(5) take testimony;

(6) rule on questions of evidence;

(7) admit, deny, or redesignate party status;

(8) admit or deny participation in the proceedings by a person claiming to represent a party;

(9) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(10) grant a continuance;

(11) request parties to submit legal memoranda;

(12) issue a proposal for decision pursuant to the Administrative Procedure Act, §2001.062; and

(13) consider exceptions and replies to the proposal for decision.

**§249.33. *Recusal and Disqualification of Judges.***

A judge shall disqualify or recuse himself or herself on the same grounds and under the same circumstances as specified in Rule 18b of the Texas Rules of Civil Procedure.

**§249.34. *Substitution of Judges.***

(a) If for any reason a judge is unable to continue presiding over a pending hearing, or issue a proposal for decision after the conclusion of the hearing, another judge may be designated as a substitute, in accordance with law.

(b) The substitute judge may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as are necessary and proper to conclude the hearing and render a proposal for decision.

**§249.35. *Classification of Parties.***

Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

**§249.36. *Appearance of Parties; Representation.***

(a) In contested-case proceedings, parties may represent themselves or be represented by counsel authorized to practice law in the State of Texas.

(b) Authorized representatives shall enter their appearance with the office and notify other parties of their representation. In the absence of a formal withdrawal and an order approving such withdrawal issued by the presiding judge, a party's authorized representative remains the representative of record.

**§249.37. *Classification of Pleadings.***

Pleadings filed with the office include petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

**§249.38. *Filings.***

The following requirements listed in paragraphs (1)-(5) of this section govern the filing pleadings and other documents in contested cases pending before the office, unless modified by order of the judge.

(1) Place for filing original materials. The original of all pleadings and documents in a contested case shall be filed with the office once it acquires jurisdiction under this chapter. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Filings by facsimile transmission are allowed in accordance with rules of the office.

(2) Form of pleadings. Pleadings shall be typewritten or machine printed on paper 8-1/2 inches wide and 11 inches long, with left and right margins at least one inch wide. Exhibits attached to a pleading shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible. The impression shall only be on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced.

(3) Amended and supplemental pleadings. Any pleading filed pursuant to a notice of hearing may be amended or supplemented up to seven days prior to the hearing. Amendments or supplements after that time will be at the discretion of the judge.

(4) Method for submitting confidential materials under protective order. A party filing materials made confidential by a protective order shall file them in an enclosed, sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and explain the nature of the sealed materials. The container shall identify the docket number, style of the case, and name of the submitting party, and be marked "CONFIDENTIAL UNDER SEAL" in bold print at least one inch in size. Each page of the confidential material shall be marked "confidential."

(5) Materials submitted for in camera review. A party submitting materials for in camera review by the judge shall supply them to the judge in an enclosed, sealed and labeled container, accompanied by an explanatory cover letter copied to all parties. The cover letter, addressed to the judge, shall identify the docket number, style of the case, explain the nature of the sealed materials, and specify the relief sought. The container, addressed to the judge, shall identify the docket number, style of the case, and name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged." Said materials will not be received for filing by the office unless the judge so orders. Unless otherwise ordered by the judge, materials reviewed in camera will be returned to the party who submitted them.

**§249.39. *Petition.***

(a) The party requesting a contested-case hearing under this chapter shall file a petition with the office. A petition appealing the administrative decision to deny the issuance of a certificate shall be filed within 30 days of the applicant receiving notice of the denial or be dismissed.

(b) The petition shall contain the following items listed in paragraphs (1)-(6) of this subsection:

(1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;

(2) a reference to the particular sections of the statutes and rules involved;

(3) a statement of the matters asserted;

(4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;

(5) if the petition is filed in the name of the board, a notification that the matters asserted in the petition will be deemed admitted unless the respondent's answer specifically denies each assertion pled and is filed within the prescribed time period; and

(6) the name, mailing address, daytime telephone number, and facsimile number of the petitioner's representative.

(c) Nothing in this section requires the petitioner to plead all evidence relied upon. However, all issues relied upon by the petitioner must be raised in the petition, and the petitioner will be denied the opportunity to present evidence on issues not raised in the petition.

(d) The petition shall be served on the respondent by hand delivery, certified mail, or facsimile transmission. A certificate evidencing service shall be included in the petition.

**§249.40. Answer.**

(a) The party responding to a petition filed under this chapter shall file an answer within 30 days after being served with such petition.

(b) The answer shall specifically admit or deny each allegation in the petition and shall set forth all affirmative defenses.

(c) The answer shall contain the name, mailing address, daytime telephone number, and facsimile number of the respondent or the respondent's authorized representative.

(d) All well-pled factual allegations will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

**§249.41. Stipulations.**

(a) The parties, by stipulation, may agree to any substantive or procedural matter.

(b) A stipulation may be filed in writing, entered on the record at the hearing, or made part of an order approved by the judge and signed by the parties or their authorized representatives.

(c) The judge may require additional development of stipulated matters.

**§249.42. Motions for Continuance.**

(a) Motions for continuance shall meet the following requirements listed in paragraphs (1)-(5) of this subsection:

(1) be in writing and show the specific grounds upon which the party seeks the continuance;

(2) be filed no later than five days before the date of the hearing, unless, for good cause shown in the motion, the judge allows a motion to be filed later or presented orally at the hearing;

(3) indicate that the movant has contacted each party and whether any party opposes the motion, or describe in detail the movant's attempts to contact each party;

(4) if seeking a continuance to a certain date, provide a proposed date or dates (preferably a range of dates) and indicate whether each party contacted agrees on the proposed new date(s); and

(5) be filed with the office and properly served on each party, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand delivery or facsimile transmission on the same date it is filed with the office, or by overnight delivery on the next day.

(b) Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. A party opposing a motion for continuance must be given the opportunity to timely respond before the judge rules on the motion. Written responses to motions for continuance shall be filed on the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the hearing.

(c) A party who asserts "good cause" in a motion for continuance must support that assertion by affidavit or other competent proof.

**§249.43. Discovery.**

(a) Parties to a contested case hearing before the office may avail themselves of the forms of discovery afforded by the Texas Rules of Civil Procedure.

(b) All discovery requests shall be initially directed to the party from whom discovery is being sought.

(c) Requests for issuances of subpoenas or commissions shall be directed to the office.

(d) All parties shall be afforded a reasonable opportunity to file objections or move for a protective order with respect to the issuance of a subpoena or commission.

(e) All disputes with respect to any discovery matter shall be filed with and resolved by the office.

**§249.44. Protective Orders.**

On motion specifying sufficient grounds, the presiding judge may make any ruling in the interest of justice necessary to protect a person against whom discovery is sought.

**§249.45. Orders Compelling Discovery.**

(a) Requests for orders compelling discovery shall truthfully state that, after due diligence, the desired information or materials cannot be obtained through informal means and that good faith efforts at negotiation have failed to produce the requested discovery. For the motion to compel to be granted, the movant must also show to the satisfaction of the judge that good cause exists for requiring discovery.

(b) The judge may deny the motion to compel if the request is untimely or unduly burdensome; if the movant has failed to exercise due diligence or to show that good cause exists for requiring discovery; if the discovery would result in unnecessary delay; or for other good cause shown in the interest of justice.

**§249.46. Sanctions for Abuse of Administrative Process.**

(a) On the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, the presiding judge may impose appropriate sanctions as provided by subsection (b) of this section against a party or authorized representative for the following misconduct related to the administrative process as listed in paragraphs (1)-(3) of this subsection:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the judge or the board.

(b) A sanction imposed under subsection (a) of this section may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or of a particular kind by the offending party;

(2) ruling that designated facts be deemed admitted for purposes of the proceeding;

(3) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(4) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(5) striking pleadings, testimony, and/or other evidence, in whole or in part.

(c) Sanctions allowed by this section and the grounds for them are also available to the chair in any other proceeding before the board that is not conducted by the office.

#### *§249.47. Prehearing Conference.*

When appropriate, the judge may hold a prehearing conference to resolve matters preliminary to the hearing. At the discretion of the judge, a prehearing conference may be held by telephone.

#### *§249.48. Waiver of Hearing.*

A hearing before the judge is not necessary if all parties agree to the admission of the evidence and waive their right to appear.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dr. Mark Littleton

Executive Director

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## Subchapter D. Hearing Procedures

### 19 TAC §§249.60-249.68

The new sections are proposed under the Texas Education Code, §21.041(b)(7) and (8), which requires the SBEC to propose rules that provide for disciplinary proceedings in accordance with the Administrative Procedures Act, including sanctions of an educator certificate, and for the enforcement of an educator's code of ethics. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, allow the SBEC to sanction an educator's certificate on the basis of a criminal conviction but require the agency to publish guidelines relating to the actual practice of this authority. The provisions of this Chapter 249 are issued under the Texas Education Code, §21.031, relating to the board's purpose to regulate and oversee all aspects of the standards of conduct of public school educators; §21.041(b)(7), (8), relating to the board's power and duty to propose rules that provide for disciplinary proceedings, including sanctions, and for the enforcement of an educators' code of ethics; and §21.042, relating to the State Board of Education's review of board rules.

Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, require the SBEC to issue and publish guidelines for the denial or sanction of an educator certificate on the basis of criminal conviction.

The following are affected by the proposed new sections: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995, Texas General Laws 2207, 2499-2500 and 19 TAC Chapter 247.

#### *§249.60. Notice of Contested Case Hearing.*

Notice of a contested-case hearing is governed by the Administrative Procedure Act.

#### *§249.61. Venue.*

Hearings shall be conducted in Austin, Texas, at a site designated by the office in accordance with applicable law.

#### *§249.62. Conduct of Hearings.*

(a) In a contested case, each party is entitled to do the following listed in paragraphs (1)-(4) of this subsection at hearing:

(1) call witnesses;

(2) offer evidence;

(3) cross-examine any witness called by another party; and

(4) make opening and closing statements.

(b) The hearing shall be recorded by a court reporter. The parties may be off the record only when the judge permits. If the discussion off the record is pertinent, then the judge will summarize the discussion for the record.

(c) The judge may continue a hearing from time to time and from place to place. If the time and place for reconvening the hearing are not announced at the hearing, the judge shall issue a notice stating the time and place of hearing.

#### *§249.63. Telephone Hearings.*

(a) The judge may, with consent of the parties or as provided by subsection (e) of this section, conduct all or part of the hearing by telephone, video, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding.

(b) All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.

(c) For a telephone hearing, documentary evidence to be offered shall be mailed by the proponent to each party and the office at least five days before the hearing.

(d) For a telephone hearing, the following may be considered a failure to appear and grounds for default, if the following conditions listed in paragraphs (1)-(3) of this subsection exist for more than 20 minutes after the scheduled time for hearing:

(1) failure to answer the telephone;

(2) failure to free the telephone for a hearing; or

(3) failure to be ready to proceed with the hearing as scheduled.

(e) Upon timely motion by a party showing good cause, the judge may order the taking of a witness's testimony by telephone in the interest of justice and to avoid unnecessary expense or undue burden.

#### *§249.64. Consolidated Proceedings.*

A party may move to consolidate two or more proceedings under this chapter if:

- (1) they involve common questions of law and fact; and
- (2) separate proceedings would result in unwarranted expense, delay, or substantial injustice.

**§249.65. Record.**

(a) The record in a contested case includes the items and matters listed in the Administrative Procedure Act, §2001.060.

(b) Proceedings, or any part of them, shall be transcribed on the written request of any party or the presiding judge. The office shall be provided a copy or diskette of any record so transcribed.

(c) A party or other person requesting a verbatim record shall pay the applicable reporting fees in the board's court-reporting services agreement.

**§249.66. Order of Proceedings.**

(a) A case shall be called to order by the judge.

(b) The judge shall explain briefly the purpose and nature of the hearing.

(c) The judge may allow the parties or their authorized representatives to present preliminary matters.

(d) The judge shall state the order of presentation of evidence.

(e) Witnesses shall be sworn or put under affirmation to tell the truth.

**§249.67. Oral Argument.**

At the conclusion of the hearing, oral argument may be heard upon approval of the presiding judge. The judge may prescribe reasonable time limits or accept written briefs in lieu of oral arguments.

**§249.68. Failure To Attend Hearing and Default.**

If, after receiving proper notice of a hearing, a party fails to attend a hearing, the judge may proceed in that party's absence and issue a proposal for decision against the defaulting party.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## Subchapter E. Posthearing Procedures

### 19 TAC §§249.80-249.85

The new sections are proposed under the Texas Education Code, §21.041(b)(7) and (8), which requires the SBEC to propose rules that provide for disciplinary proceedings in accordance with the Administrative Procedures Act, including sanctions of an educator certificate, and for the enforcement of an educator's code of ethics. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, allow the SBEC to sanction an educator's certificate on the basis of a criminal conviction but require the agency to publish guidelines relating to the actual

practice of this authority. The provisions of this Chapter 249 are issued under the Texas Education Code, §21.031, relating to the board's purpose to regulate and oversee all aspects of the standards of conduct of public school educators; §21.041(b)(7), (8), relating to the board's power and duty to propose rules that provide for disciplinary proceedings, including sanctions, and for the enforcement of an educators' code of ethics; and §21.042, relating to the State Board of Education's review of board rules. Articles 6252-13c and 6252-13d, Texas Revised Civil Statutes, require the SBEC to issue and publish guidelines for the denial or sanction of an educator certificate on the basis of criminal conviction.

The following are affected by the proposed new sections: Act effective May 30, 1995, 74th Legislature, Regular Session, Chapter 260, §63, 1995, Texas General Laws 2207, 2499-2500 and 19 TAC Chapter 247.

**§249.80. Proposal for Decision.**

(a) The presiding judge shall prepare a proposal for decision that shall contain the following items listed in paragraphs (1)-(2) of this subsection:

(1) findings of fact and conclusions of law, separately stated, including a recommended sanction; and

(2) if appropriate, a proposed order, including a recommended sanction.

(b) The judge may amend the proposal for decision pursuant to exceptions, replies to exceptions, and briefs.

(c) The judge shall submit the proposal for decision to the board's headquarters, with a copy to each party.

(d) Except as otherwise provided or prohibited by these rules and other applicable law, the board's general counsel may issue orders related to procedural matters that arise after the submission of the proposal for decision to the board and that are not delegated to the office for decision.

**§249.81. Exceptions and Replies.**

(a) Any party of record who is aggrieved by the judge's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within ten days from the date of service of the proposal for decision. Any replies to the exceptions shall be filed by other parties within seven days of receiving the exceptions. Exceptions and replies shall be filed with the office and directed to the presiding judge's attention for determination.

(b) All disagreements with the factual findings of the proposal for decision must be contained in the exceptions to the proposal for decision or be waived.

(c) Each exception or reply to a finding of fact shall be concisely stated and shall summarize the evidence in support of each exception. Arguments shall be logical and citations to authorities shall be complete. Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(d) Briefs shall be filed only when requested or permitted by the judge.

(e) Exceptions and replies shall be served upon every party of record by the filing party.

**§249.82. Presentation of Proposal to Board.**

The board may require the presiding judge to make a presentation on the proposal for decision at a public meeting of the board.

**§249.83. Final Decisions and Orders.**

(a) The chair having certified a quorum present at a regularly scheduled board meeting, a majority vote of the voting members present shall be required to make a final decision approving a proposal for decision; a two-thirds majority vote of the voting members present shall be required to change a finding of fact or conclusion of law made by the judge or to vacate or modify a proposal for decision issued by the judge.

(b) A copy of the board's decision or order shall be delivered by hand or certified mailed to the parties or to their authorized representatives, as appropriate, and to the office.

(c) All final decisions and orders of the board after consideration of a proposal for decision shall be in writing or stated in the record and signed by the chair. A final decision or order shall include findings of fact and conclusions of law separately stated.

(d) If the board changes a finding of fact or conclusion of law made by the judge, or vacates or modifies a proposed order, including recommended sanctions, submitted by the judge, the board's final decision or order shall show how the proposal was changed.

*§249.84. Motion for Rehearing; Administrative Finality.*

A motion for rehearing of the board's decision in a contested case and the determination of administrative finality shall be governed by the Administrative Procedure Act, Chapter 2001, Subchapter F.

*§249.85. Reinstatement; Modification of Restrictions.*

(a) Unless the board has permanently revoked the certificate, a person whose certificate has been revoked or restricted, whether voluntarily or by action of the board, may, no sooner than 12 months from the effective date of such revocation or restriction(s), apply to the board for reinstatement of the certificate or for modification, including removal, of restriction(s) on the certificate. In revoking or restricting a certificate, the board may order that the educator be prohibited from applying for reinstatement or modification until the later of:

(1) 12 months from the effective date of the revocation or restriction(s); or

(2) successful completion or discharge of any sentence, incarceration, fine, parole, mandatory supervision, probation, community supervision, community service, restitution, or other requirement or condition judicially imposed in connection with a criminal offense.

(b) The application shall be given under oath, completed on a form prescribed by the executive director, and accompanied by any applicable fee.

(c) After investigation by staff and any contested-case hearing conducted by the office under this chapter, as appropriate, the board may grant or deny the application or it may modify its original decision to reflect any circumstances that have changed sufficiently to warrant reinstatement or modification.

(d) If the board denies such application in whole or in part, a subsequent application may not be considered by the staff, executive director, office, or board until at least 12 months from the effective date of the previous denial.

(e) In determining whether to reinstate or to modify restrictions of a certificate, the board may consider the following factors listed in paragraphs (1)-(14) of this subsection:

- (1) moral character in the community;
- (2) employment history;

(3) legally obligated financial support of any children or spouse;

(4) participation in continuing education programs or other methods of maintaining currency with the education profession;

(5) criminal history record, including arrests, indictments, and convictions for crimes involving moral turpitude;

(6) successful completion or discharge of any sentence, incarceration, fine, parole, mandatory supervision, probation, community supervision, community service, restitution, or other requirement or condition judicially imposed in connection with a criminal offense;

(7) offers of employment in the education profession;

(8) involvement in public service activities in the community;

(9) failure to comply with the provisions of the board order revoking or restricting the applicant's certificate;

(10) action by other state or federal regulatory agencies;

(11) any evidence of drug or alcohol abuse;

(12) the gravity of the misconduct for which the applicant's certificate was revoked or restricted and the impact the misconduct had on students, parents of students, school officials, fellow employees, or professional colleagues;

(13) the length of time since the applicant's certificate was revoked or restricted considered in light of whether the applicant has had sufficient time for successful rehabilitation; or

(14) other actions taken by the applicant to ably and responsibly resume full duties as a public-school educator.

(f) The executive director shall have notice published of any certificate reinstated by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 469-3012

## TITLE 22. EXAMINING BOARDS

### Part IV. Texas Cosmetology Commission

#### Chapter 89. General Rules and Regulations

##### 22 TAC §89.8

The Texas Cosmetology Commission proposes the new section § 89.8, concerning student registration.

The new section is proposed to allow the commission to enforce registration procedures.

Delores Alspaugh, Interim Executive Director, has determined that for the first five-year period the rule is in effect, there will



be fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Alspaugh also has determined that for each year of the first five years there should not be any public benefit anticipated as a result of enforcing the rule. There are anticipated economic costs to persons who are required to comply with the rules as adopted

Comments on this proposed new section may be submitted to Delores L. Alspaugh, P.O. Box 26700, Austin, Texas 78755.

The new section is proposed under Section 22 of Article 8451a, V.T.C.S., which provides the commission with the authority to issue rules consistent with this Act after a public hearing and to protect the public's health and safety.

The Statute is not effected by this proposed new section.

#### §89.8. *Student Registration.*

For each student enrolling in a school of cosmetology, the school must submit a properly completed form and fee, if necessary, to the commission office within 10 days of enrollment in order for the student to receive credit for hours accrued.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713702

Delores Alspaugh

Interim Executive Director

Texas Cosmetology Commission

Filed: October 15, 1997



## Part XIV. Texas Optometry Board

### Chapter 275. Continuing Education

#### 22 TAC §275.1

The Texas Optometry Board proposes an amendment to §275.1, to inform licensees and sponsors of continuing education of the procedures to be followed in submitting courses for approval on an hour-to-hour basis and submitting proof of hours to the Board Office.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Lois Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is that licensees will be able to obtain ongoing education from a number of sources enabling each to maintain a licensee to practice optometry and enhance their practice techniques.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is November 14, 1997.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, §2.14 and §4.01B.

No other code, statute or article is affected by this proposed amendment.

#### §275.1. *General Requirements.*

(a) (No change.)

(b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or schools of optometry and such other programs or courses of other organizations as are approved by the board upon recommendation from the Continuing Education Committee, appointed by the Board Chair. The Continuing Education Committee will consider, among other things in its discretion, the following criteria in approving courses:

(1) - (6) (No change.)

(7) courses sponsored by individual providers may be approved but **providers** must supply the committee with a synopsis of the lecture material to be presented, **itinerary including time in the class, and** [as well as] resumes of the lecturers.

(8) (No change.)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713573

Lois Ewald

Executive Director

Texas Optometry Board

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 305-8500



## Part XXI. Texas State Board of Examiners of Psychologists

### Chapter 467. Announcements and Listings

#### 22 TAC 467.3

The Texas State Board of Examiners of Psychologists proposes new §467.3, concerning Misleading or Deceptive Advertising. The new rule is being proposed in order to protect the public from misleading or deceptive advertising by licensees of the Board.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that the Board has the ability to discipline licensees who engage in misleading or deceptive advertising concerning the practice of psychology. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The new rule is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which

are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

*§467.3. Misleading or Deceptive Advertising.*

(a) A licensee's authorization of or use in any advertising or listing for the practice of psychology of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising under the Act, §8(h), unless the licensee discloses the complete name of the specialty board which conferred the aforementioned certification.

(b) A licensee may not use the term "Board Certified" or "Board Approved" or any similar words or phrase calculated to convey the same meaning if the claimed board certification has expired and has not been renewed at the time the advertising in question was published or broadcast.

(c) A licensee may not authorize or use in any advertising for the practice of psychology any other words or phrases concerning his or her particular practice of psychology or qualifications to practice which are not based in fact.

(d) A licensee may not authorize or use in any advertising for the practice of psychology any other words or phrases which are misleading or deceptive to the public consumers of psychological services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713868

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 305-7700



## Part XXV. Structural Pest Control Board

### Chapter 591. General Provisions

#### 22 TAC §591.21

The Texas Structural Pest Control Board proposes an amendment §591.21, concerning definition of terms; the amendment adds a definition of bait process. The Board is proposing an effective date of September 1, 1998 for this change.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

There will be no estimated additional cost or estimated reduction in cost to state or local government for the first five-year period the rule will be in effect.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be a defined concept of the bait process for insect control.

There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, Texas Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723.

The amendment is proposed under Article 135b-6 which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following is the (statutes, articles or code) that are affected by this rule: Rule Number Statute, Article or Code, 22 TAC 591.21 Article 135b-6, 22 TAC 599.4 Article 135b-6, 22 TAC 599.6 Article 135b-6.

*§591.21. Definition of Terms.*

In addition to the definitions set out in the Structural Pest Control Act, Section 2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

**Bait Process**-The use of food or other requisite that may be treated with a pesticide and/or other mitigating agent that will adversely affect the pest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 10, 1997.

TRD-9713484

Benny M. Mathis, Jr.

Executive Director

Structural Pest Control Board

Earliest possible date of adoption: November 24, 1997

For further information, please call: (512) 451-7200



## Part XXX. State Board of Examiners of Professional Counselors

### Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (the board) proposes amendments to §§681.64, 681.81, 681.82, 681.92, and 681.94 concerning the licensing and regulation of professional counselors. Specifically, the amendments cover academic course content, temporary license requirements, experience requirements (internship), requirements for examination and examination failures. The amendments are necessary to implement legislative amendments to Texas Civil Statutes, Article 4512g (the Licensed Professional Counselor Act) which increased the supervised experience requirements from 24 months or 2,000 clock hours to 36 months or 3,000 clock hours and to delete the language relating to an application for examination.

John Luther, Executive Director of the board, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mr. Luther also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering and enforcing the sections will be to ensure competent counselors continue to be identified through requirements which reflect more closely the national standards

and allow for broader participation by licensees with preferred provider organizations, health maintenance organizations and insurance companies. The effect on small businesses who employ licensed professional counselor (LPC) interns is that it will take longer for the interns to be eligible for examination and obtain a regular license. The anticipated economic cost to persons who are required to comply with the sections as proposed will be the cost for the additional supervision hours. There will be no effect on local employment.

Comments on the proposal may be submitted to John Luther, Executive Director, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658, and must be received no later than 30 days following the date of publication of the proposal in the *Texas Register*.

## Subchapter E. Academic Requirements for Examination and Licensure

### 22 TAC §681.64

#### Subchapter E. Academic Requirements for Examination and Licensure

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and §14(p) relating to rules concerning temporary licenses.

The amendment affects Texas Civil Statutes, Article 4512g.

#### §681.64. *Academic Course Content.*

(a) An applicant is responsible for obtaining academic coursework in and demonstrating competency in the following specific areas through successful completion of the examination once the [2,000 hour] supervised experience requirement has been met:

(1)-(9) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713840

Tony Picchioni, Ph. D.

Chair

State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 458-7236



## Subchapter F. Experience Requirements for Examination and Licensure

### 22 TAC §§681.81, 681.82

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional

Counselor Act and §14(p) relating to rules concerning temporary licenses.

The amendments affect Texas Civil Statutes, Article 4512g.

#### §681.81. *Temporary License.*

(a)-(f) (No change.)

(g) An LPC intern who holds a temporary license may obtain a regular license by:

[(1) submitting an application for examination;]

(1) [(2)] submitting a supervised experience documentation form documenting successful completion of **the required** [2,000] hours of supervised experience in accordance with §681.52(c) of this title (relating to Required Application Materials) **and §681.82 of this title (relating to Experience Requirements (Internship))**; and

(2) [(3)] successfully completing an examination for licensure in accordance with Subchapter G of this chapter (relating to Licensure Examinations).

#### §681.82. *Experience Requirements (Internship).*

(a) Applicants for **licensure** [examinations] must have completed a **supervised experience acceptable to the Texas State Board of Examiners of Professional Counselors (board)** based on the following:

(1) **persons who were admitted to a counselor preparation program designed to obtain a graduate degree in counseling or related fields prior to September 1, 1997, must complete 24 months or 2,000 clock-hours of supervised counseling experience; or**

(2) **persons who are admitted to a counselor preparation program designed to obtain a graduate degree in counseling or related fields after September 1, 1997, must complete 36 months or 3,000 clock hours of supervised counseling experience** [acceptable to the Texas State Board of Examiners of Professional Counselors (board)].

(b) **The supervised** [This] experience must include at least 1,000 hours of direct client counseling contact **for persons accumulating 2,000 hours and 1,500 hours of direct client counseling contact for persons accumulating 3,000 hours.**

(c) [(b)] An applicant must complete:

(1) the required 2,000 clock-hours of supervised experience in a time period of no fewer than 12 months; **or**

(2) **the required 3,000 clock-hours of supervised experience in a time period of no fewer than 18 months.**

(d) **The 12 or 18 month time period shall not be decreased by excess practicum hours that are applied toward the supervised experience hours.**

(e) If applying under the 24-month requirement **or the 36 month requirement**, the applicant must average at least 20 clock-hours per week of practice. [These months shall not include excess practicum hours used as supervised experience hours.]

(f) [(c)] The internship must have been after completion of a:

(1) graduate degree in counseling or a related field; and

(2) a planned graduate program in counseling or its substantial equivalent of at least 48 semester hours.

(g) [(d)] The applicant who began to accumulate supervised experience on or after September 1, 1992, must have completed at

least 45 graduate semester hours in counseling or a related field before beginning the supervised experience.

(h) [(e)] The experience must have consisted primarily of the provision of direct counseling services within a professional relationship to individuals or groups by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(i) [(f)] The applicant must have received direct supervision consisting of a minimum of one hour a week of face-to-face supervision in individual or group settings with no more than one half of the total hours of supervision having been received in group supervision.

(j) [(g)] The experience must have been under the direction of a board approved supervisor.

(k) [(h)] The board may count excess practicum hours toward the experience requirements of this subchapter if:

(1) the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;

(2) the hours are in excess of the 300-hour practicum required by §681.64(c) of this title (relating to Academic Course Content); and

(3) the hours to be counted are not more than 400 hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713839

Tony Picchioni, Ph. D.

Chair

State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 458-7236

## Subchapter G. Licensure Examinations

### 22 TAC §§681.92, 681.94

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and §14(p) relating to rules concerning temporary licenses.

The amendments affect Texas Civil Statutes, Article 4512g.

§681.92. **Requirements** [Applying] for Licensure Examination.

(a) LPC interns must submit [the following:]

[(1) an application for examination; and] [(2)] a supervised experience documentation form documenting successful completion of **the required** [2,000 hours of ] supervised experience in accordance with §681.52(c) of this title (relating to Required Application Materials).

(b) Applicants for a regular license that do not hold a temporary license must apply for licensure in accordance with §681.51 of this title (relating to Application Procedures) and §681.52 of this title (relating to Required Application Materials).

(c) The Texas State Board of Examiners of Professional Counselors (board) shall provide written notification to **persons who meet all requirements for** [applicants whose application for] examination [has been approved].

§681.94. **Failures.**

(a)-(b) (No change.)

(c) **A person** [An applicant] who fails any two successive examinations may not apply for a regular license until two years have elapsed from the date of the last examination or until the **person** [applicant] has completed nine graduate semester-hours in the applicant's weakest portions of the examination. An application **for licensure** must be submitted in accordance with §681.51 of this title (relating to General) and §681.52 of this title (relating to Required Application Materials).

(d) The temporary license of **a person** [an applicant] who fails any two successive examinations shall be voided.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713838

Tony Picchioni, Ph. D.

Chair

State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 458-7236

## TITLE 25. HEALTH SERVICES

### Part VII. Texas Medical Disclosure Panel

#### Chapter 601. Informed Consent

##### 25 TAC §§601.4, 601.6, 601.8

*Editor's Note: Due to a technical error on behalf of the Texas Register, the figures for the following proposed rules submitted by the Texas Medical Disclosure Panel were inadvertently omitted from the October 17, 1997, issue of the Texas Register due to an error by the Texas Register (22 TexReg 10236). The proposed date of adoption will be December 1, 1997.*

The Texas Medical Disclosure Panel (panel) proposes amendments to §601.4 and §601.6, and proposes new §601.8, concerning informed consent. Section 601.4 adopts the form to be used to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named on the form. Section 601.6 provides a history of rule actions. New §601.8 proposes a new disclosure and consent form which shall be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in performing a hysterectomy.

The amendment to §601.4 adds language providing exceptions to using the general disclosure and consent form. The language added addresses the exception to using the general disclosure

form for electroconvulsive therapy, clarifying intent of an amendment adopted by the panel effective October 3, 1995; and addresses the new exception for hysterectomy procedures. There are no changes proposed to the disclosure and consent form for medical and surgical procedures.

The amendment to §601.6 updates the history of rules changes, by including the rules adopted by the panel effective October 3, 1995, as stated in new subsection (g) of §601.6; the rule adopted by the panel to be effective October 23, 1997, as stated in new subsection (h) of §601.6; and the anticipated effective date of these proposed rules concerning §§601.4, 601.6, and 601.8, as stated in new subsection (i) of §601.6.

New §601.8 establishes a new hysterectomy disclosure and consent form in response to House Bill 723 which amended the Medical Liability and Insurance Improvement Act of Texas (Act), Texas Civil Statutes, Article 4590i, Subchapter F, by adding §6.08 which requires the panel to develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy. The proposed form includes the information required by House Bill 723 and incorporates current language from the general disclosure and consent form to meet the requirements of §6.08(d) of the Act which requires a physician or health care provider to obtain informed consent under both §6.05 and §6.08 of the Act from a patient or person authorized to consent for the patient before performing a hysterectomy.

Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing the section as proposed.

Ms. Underwood has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section will be to provide the public with the risks and hazards associated with hysterectomies. There will be minimal additional costs to small businesses (i.e., physicians, medical care providers) estimated to be between \$50 - \$250 each year depending on their costs to reproduce the disclosure form to add the new risks and hazards. There are no economic costs to persons (other than physicians or medical care providers shown in this cost note as small businesses) who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to the Texas Medical Disclosure Panel, Attn: S. Mark Jeffers, Program Administrator, Consolidated Programs, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (Telephone (512) 834-6647). Comments will be accepted for a period of 30 days after publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under the Medical Liability and Insurance Improvement Act of Texas, Texas Civil Statutes, Article 4590i, §6.04, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure; and §6.08 which requires the panel to develop and prepare written materials to inform a patient or person

authorized to consent for a patient of the risks and hazards of a hysterectomy.

The amendments and new section affect the Texas Civil Statutes, Article 4590i.

*§601.4. Disclosure and Consent Form.*

(a) The Texas Medical Disclosure Panel adopts the following form **which shall** [to] be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named in the form. This form is to be used for the medical treatments and surgical procedures described in §601.2 of this title (relating to Procedures Requiring Full Disclosure—List A) except for **the procedures shown in subsection (b) of this section:** Figure 1: 25 TAC §601.4(a)

**(b) Informed consent for:**

(1) radiation therapy **shall be provided in accordance with** [as stated in] §601.5 of this title (relating to Radiation Therapy Disclosure and Consent Form); [.]

(2) **electroconvulsive therapy shall be provided in accordance with §601.7 of this title (relating to Informed Consent for Electroconvulsive Therapy); and**

(3) **hysterectomy procedures shall be provided in accordance with §601.8 of this title (relating to Hysterectomy Disclosure and Consent Form).**

*§601.6. History.*

(a)-(f) (No change.)

(g) Effective October 3, 1995, §§601.1 - 601.4 were repealed, and new §§601.1 - 601.7, were adopted. The sections were repealed to incorporate List A and List B into Texas Register format. In addition, sections were added to include general provisions; to provide a history of the rules of the panel; and to adopt a section which addresses informed consent for electroconvulsive therapy.

(h) Effective October 23, 1997, §601.2 was amended to update risks and hazards requiring full disclosure prior to performing abdominal endoscopic/laparoscopy procedures and endoscopic surgery of the thorax.

(i) Effective January 1, 1998, §601.4 and §601.6 were amended and new §601.8 was added to address legislative requirements relating to informed consent for hysterectomies. Section 601.8 adopts a form to be used in providing informed consent prior to performing an hysterectomy.

*§601.8. Hysterectomy Disclosure and Consent Form.*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in the hysterectomy surgical procedure named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4 of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only hysterectomy procedures. The form shall be available in both English and Spanish. Figure 1: 25 TAC §601.8

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 3, 1997.

TRD-9713191

Melba W. G. Swafford, M.D.  
Chairman  
Texas Medical Disclosure Panel  
Earliest possible date of adoption: December 1, 1997  
For further information, please call: (512) 834-6646

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part I. General Land Office

#### Chapter 15. Coastal Area Planning

##### Subchapter A. Management of the Beach/Dune System

###### 31 TAC §15.11

The General Land Office proposes an amendment to §15.11, relating to the conditional certification of the City of Galveston's (City's) dune protection and beach access plan (Plan) under the state rules for Management of the Beach/Dune System (beach/dune rules), 31 TAC §§15.1-15.10.

This amendment is in response to an amendment of the City's conditionally certified Plan. The City has requested that the General Land Office certify a Plan amendment, City Ordinance No. 97-80, that includes a variance from the prohibitions and requirements of §15.4(c)(8) and §15.5(b)(3) of the beach/dune rules. Section 15.4(c)(8) prohibits the construction of concrete slabs or other impervious surfaces within 200 feet landward of the natural line of vegetation. Section 15.5(b)(3) prohibits a local government from issuing a beachfront construction certificate if the construction includes a proposal to build a concrete slab or other impervious surface within 200 feet of the line of vegetation or within the eroding area boundary, whichever distance is greater.

The City has amended its Plan to prohibit the paving or altering of the ground below the lowest habitable floor in the area between the line of vegetation and 25 feet landward of the north toe of the dune and to only allow the use of unreinforced fibercrete in 4 feet by 4 feet sections, no more than 4 inches thick and separated by expansion joists or pervious materials, in the area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation. The City has also instituted a \$200 fibercrete maintenance fee that will be used to pay for the cleanup of fibercrete from the public beaches should the need arise.

The City has submitted to the General Land Office a reasoned justification demonstrating how the fibercrete variance will advance the public interest and provide an equal or better level of protection or equal or better procedures than provided under the beach/dune rules. Because the variance requested by the City prohibits the use of any paving material in the area between the line of vegetation and 25 feet landward of the north toe of the dune, provides that only fibercrete may be used in the area 25 feet landward of the north toe of the dune to 200 feet landward from the line of vegetation, and institutes a \$200 fibercrete maintenance fee for the cleanup of fibercrete from the public beaches, the General Land Office finds that the variance provision will advance the public interest and provide an equal or better level of protection of dunes, dune vegetation, and pub-

lic access to and use of the public beach than provided under the beach/dune rules.

The City has not completed the modification of its plan consistent with the General Land Office's comments of October 14, 1993. Therefore, the conditional certification of the City's Plan will be reissued and continued for another 180 days from the effective date of this proposed certification.

The proposed certification of the City's Plan amendment is subject to the Texas Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), and must be consistent with the applicable CMP goals and policies under 31 TAC §501.14(k), relating to Construction in the Beach/Dune System. The General Land Office has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies.

Caryn K. Cosper, deputy commissioner for the Resource Management Program, has determined that for the first five year period the proposed amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering this amendment.

Ms. Cosper also has determined that for each year of the first five years that the proposed amendment is in effect the public benefit of this amendment will be that the fibercrete maintenance fee will provide additional funds for removing fibercrete from the public beach should it wind-up there as a result of erosion. Ms. Cosper has also determined that the anticipated economic cost to persons who are required to comply with this amendment for each year of the first five years the proposed amendment will be in effect is the \$200 fibercrete maintenance fee assessed by the City for each beachfront construction certificate.

Comments on the proposed amendment and proposed conditional certification of the City's Plan may be submitted in writing to Sylvia Sissom, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, facsimile number (512) 463-6311. Comments must be received by 5:00 p.m. on December 1, 1997. Copies of the City's Plan and the Plan amendment are available from the City and the General Land Office Archives Division.

The amendment is proposed under Texas Natural Resources Code, §61.011 and §61.015(b), which provides the General Land Office with the authority to preserve and enhance public beach access; Texas Natural Resource Code, §63.121, which provides the General Land Office with the authority to identify and protect critical dune areas; Texas Natural Resource Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion; and Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

Texas Natural Resource Code §§61.011(d), 61.013, 61.015, and 63.121 are affected by this proposed amendment.

*§15.11. Certification of Local Government Dune Protection and Beach Access Plans.*

(a) (No change.)

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General

Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993 , amended September 30, 1997).

(A) This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(B) This certification includes a variance from §15.4(c)(8) and §15.5(b)(3) of this title (relating to Dune Protection Standards and Beachfront Construction Standards). The City of Galveston's plan:

(i) provides that paving or altering the ground below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(ii) provides that paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists, or pervious materials approved by the City Department of Planning and Transportation, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation;

(iii) assesses a "Fibercrete Maintenance Fee" of \$200.00 to be used to pay for the clean-up of fibercrete from the public beaches, should the need arise; and

(iv) allows the use of reinforced concrete in that area landward of 200 feet from the line of vegetation.

(2)-(3) (No change.)

(c)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713782

Garry Mauro

Commissioner

General Land Office

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 305-9129



## Part X. Texas Water Development Board

### Chapter 363. Financial Assistance Programs

#### Subchapter E. Economically Distressed Areas Program

The Texas Water Development Board (the board) proposes the repeal of existing §363.511 and new §363.511 concerning a Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs. The new section replaces the expired memorandum of understanding and details the responsibility of each agency regarding the coordination of funds out of the Economically Dis-

tressed Areas Program, administered by the board, and the Colonia Fund, administered by the Texas Department of Housing and Community Affairs, so as to maximize delivery of the funds and minimize administrative delay in the expenditure of these funds.

Ms. Paris Peden, Interim Director of Accounting & Finance, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Ms. Peden also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to maximize delivery of funds from the Economically Distressed Areas Program and the Colonias Fund and minimize administrative delay in the expenditure of these funds and thereby obtain the public health benefits from the installation of wastewater treatment and collection systems in colonias. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Attorney, 512/475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

#### Economically Distressed Areas

##### 31 TAC §363.511

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of the Texas Water Code, §6.104 which requires the board to adopt by rule any memorandum of understanding between the board and any other state agency.

Texas Water Code, §17.934 and the General Appropriations Act of 1997, House Bill 1 (as modified by House Bill 4, Senate Bill 1898, and House Bill 2272), Article VI, Water Development Board, p. VI-50, paragraph 9, and Art. VII, Department of Housing and Community Affairs, p. VII-21, paragraph 4, 75th Legislature Regular Session are the statutory provisions affected by the repeal.

§363.511. *Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713822

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: December 11, 1997

For further information, please call: (512) 463-7981

##### 31 TAC §363.511

The new section is proposed under the authority of the Texas Water Code, §6.104 which requires the board to adopt by rule

any memorandum of understanding between the board and any other state agency.

Texas Water Code, §17.934 and the General Appropriations Act of 1997, House Bill 1 (as modified by House Bill 4, Senate Bill 1898, and House Bill 2272), Article VI, Water Development Board, p. VI-50, paragraph 9, and Art. VII, Department of Housing and Community Affairs, p. VII-21, paragraph 4, 75th Legislature Regular Session are the statutory provisions affected by the new section.

§363.511. *Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs.*

(a) Recitals.

(1) Pursuant to the 1995 Appropriations Act of the Texas Legislature, the Texas Water Development Board (TWDB) and the Texas Department of Housing and Community Affairs (TDHCA) were required to develop an Memorandum of Understanding (MOU) to detail the responsibility of each agency regarding the coordination of funds out of the Economically Distressed Areas Program, administered by the TWDB, and the Colonia Fund, administered by the TDHCA so as to maximize delivery of the funds and minimize administrative delay in their expenditure. The TWDB and the TDHCA executed an MOU and performed pursuant to the terms of that MOU.

(2) Pursuant to the 1997 Appropriations Act of the Texas Legislature, the TWDB and the TDHCA are required to continue the coordination commenced under the MOU so as to maximize delivery of the funds and minimize administrative delay in the expenditure of funds out of the Economically Distressed Areas Program, administered by the TWDB, and the Colonia Fund, administered by the TDHCA.

(b) Parties. This Memorandum of Understanding hereinafter referred to as Memorandum, is made and entered into between the Texas Department of Housing and Community Affairs (TDHCA), an agency of the State of Texas, and the Texas Water Development Board (TWDB), an agency of the State of Texas.

(c) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under Community Development Block Grant Program, Colonia Fund, are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the Economically Distressed Areas Program (EDAP) operated by the Texas Water Development Board, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(d) Period of Performance. This Memorandum shall begin on September 1, 1997 and shall terminate on August 31, 1999.

(e) Performance. Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to connect those residents' housing units to EDAP-funded water and sewer systems.

(1) TDHCA Responsibilities. TDHCA shall be responsible for the following functions:

(A) in distributing funds out of the Colonia Fund, provide top priority to those projects that are in EDAP-funded areas and which assist colonia residents who cannot afford the cost of service lines, hook-ups, and plumbing improvements associated with being connected to an EDAP-funded system;

(B) develop an application process for projects submitted by eligible units of local government;

(C) assist units of general local government in preparing an application to the Colonia Fund;

(D) determine whether projects meet federal requirements;

(E) select projects to receive funding jointly with TWDB;

(F) make Colonia Fund grant awards for selected projects on an as-needed basis;

(G) prepare and execute contracts with units of local government (Contractor localities);

(H) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(I) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(J) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(K) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations; and

(L) consult with TWDB regarding specific projects on an as-needed basis.

(2) TWDB Responsibilities. TWDB shall be responsible for the following functions:

(A) provide TDHCA, at the beginning of each fiscal year of the 1998-1999 biennium, a list of EDAP-funded areas whose colonia residents cannot afford the cost of service lines, hook-ups, and plumbing improvements associated with being connect to an EDAP-funded system;

(B) assist eligible units of local government in preparing an application for assistance through TDHCA's Colonia Fund;

(C) select projects to receive funding jointly with TDHCA; and

(D) provide assistance with technical project-related concerns brought forward by Contractor localities or TDHCA during the course of the project.

(f) Limitations. Eligible applicants shall be those counties eligible under both TDHCA's Colonia Fund and TWDB's Economically Distressed Areas Program. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and in eligible cities that annexed the colonia where improvements are to be made after January 1, 1993, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to the Texas Water Code, §16.343.

(g) Reporting Requirements. Each party to this Memorandum shall submit, on or before the fifteenth day of the month following the end of the calendar quarter, to the other party a report of



its activities and expenditures during the previous calendar quarter. The first such report shall be due January 15, 1998. No later than September 15, 1998, the TDHCA and TWDB shall submit a joint report to the Legislative Budget Board that describes and analyzes the effectiveness of projects funded as a result of coordinated Colonia Fund/EDAP efforts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713823

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: December 11, 1997

For further information, please call: (512) 463-7981



## Chapter 371. Drinking Water State Revolving Fund

### Program Requirements

#### 31 TAC §371.24

The Texas Water Development Board (board) proposes new §371.24, concerning financial assistance to disadvantaged communities through the Drinking Water State Revolving Fund. The new section includes eligibility criteria, the definition of a disadvantaged community and provisions for funding.

Ms. Paris Peden, Interim Director of Accounting & Finance, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Ms. Peden also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide low interest loans and/or loan subsidies to eligible applicants that are defined as disadvantaged communities. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed new section will be accepted for 30 days following publication and may be submitted to Lana Lutringer, 512/463-7870, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The new section is proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and specifically the SRF programs.

The statutory provisions affected by the new section are Texas Water Code, Chapter 15, Subchapter J, and Chapter 17, Subchapter C.

#### §371.24. *Disadvantaged Community Program through Loan Subsidies*

(a) Eligibility. Subject to limitations of federal law, the board may provide financial assistance in the form of low interest loans and/

or loan subsidies through the Disadvantaged Community Account of the DWSRF to:

(1) a political subdivision:

(A) that is a disadvantaged community; or

(B) for a project serving an area that:

(i) is located outside the boundaries of the political subdivision; and

(ii) meets the definition of a disadvantaged community; or

(2) an owner of a community water system that is ordered by the commission to provide service to a disadvantaged community, provided that the financial assistance is for the sole purpose of providing service to a disadvantaged community.

(b) Definition of Disadvantaged Community.

(1) A community is a disadvantaged community if it meets the definition of a disadvantaged community presently or if as a result of a proposed project, the community becomes a disadvantaged community.

(2) Disadvantaged community means the service area of a public water system that has an adjusted median household income which is at least 25% below the state average for the most recent year for which statistics are available; and

(A) if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to 1.0%; or

(B) if the service area is charged for water and sewer services, has a Combined Household Cost Factor for water and sewer rates that is greater than or equal to 2.0%.

(3) The household cost factor is calculated as the average yearly water bill divided by adjusted median household income.

(4) The combined household cost factor is calculated as the average yearly water bill plus the average yearly sewer bill divided by the adjusted median household income.

(5) The average yearly water bill is calculated as the average number of persons per occupied household multiplied by 2,325 gallons per person per month multiplied by the proposed monthly water rate multiplied by 12. The proposed monthly water rate shall include the cost of the proposed project. Any funds for the proposed project received from sources other than the DWSRF shall be deducted from the cost of the project.

(6) The average yearly sewer bill is calculated as the average number of persons per occupied household multiplied by 1,279 gallons per person per month multiplied by the monthly sewer rate multiplied by 12.

(7) The adjusted median household income is calculated as the 1990 annual median household income multiplied by the Texas Consumer Price Index for the month preceding the month that project information is solicited for the intended use plan divided by the 1990 Texas Consumer Price Index.

(8) If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household should be included in calculating the household cost factor or the combined household cost factor.

(c) Notwithstanding the provisions of §371.52 of this title (relating to Lending Rates), the interest rates and the levels of

subsidies under the disadvantaged community program will be determined by a calculation of critical need and affordability factors.

(d) If the actual cost of a project funded under this section exceeds the estimated cost of the project as listed on the intended use plan, the additional cost will be funded through the Water Supply Account of the Texas Water Development Fund and interest rates for the additional cost will be set according to the provisions of §363.33 of this title (relating to Interest Rates for Loans and Purchase of Board's interest in State Participation Projects).

(e) Term of Loan. Notwithstanding the provisions of §371.12 this title (relating to Definition of Terms), the board may extend the term of a loan made through the Disadvantaged Community Account of the DWSRF if the extended term terminates not later than the date that is 30 years after the date of project completion and does not exceed the expected design life of the project.

(f) Total Amount of Subsidies. For each fiscal year, the total amount of loan subsidies made by the board under this section may not exceed 30% of the amount of the capitalization grant received by the board for that year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713825

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: December 11, 1997

For further information, please call: (512) 463-7981



## Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (the board) proposes amendments to §375.17 and §375.52, the repeal of §§375.19-375.21, and new §§375.19-375.22, concerning the State Water Pollution Control Revolving Fund (SRF). The amendments, repeals, and new sections provide correction and add provisions to limit loan funds in the SRF program.

Amendments to §375.17 correct a federal cite and comply with federal law in deleting the Davis-Bacon Act as a federal requirement for appropriations after 1994. New §375.19 addresses the distribution of funds, notice of funds availability, and adds a provision to limit loan amounts to 25% of available funds. New §375.20 addresses the rating process. New §375.21 has been renumbered from the repealed version, addresses the Intended Use Plan, and is unchanged in content. New §375.22 has been renumbered from the repealed version, addresses Administrative Cost Recovery, and is unchanged in content. Amendments to §375.52 correct references to sections which were renumbered.

Ms. Paris Peden, Interim Director of Accounting & Finance, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Ms. Peden also has determined that for each year of the first five years that the sections are in effect the public benefit an-

ticipated as a result of enforcing the sections will be compliance with federal law and a plan that distributes available funds among more borrowers. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Gail L. Allan, Assistant General Counsel, 512/463-7804, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

## Program Requirements

### 31 TAC §§375.19-375.21

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, the SRF program.

Chapter 15, Subchapter J of the Texas Water Code are the statutory provisions affected by the proposed amendments.

§375.19. *Rating Process and Criteria and Methods for Distribution of Funds*

§375.20. *Intended Use Plan*

§375.21. *Administrative Cost Recovery*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 16, 1997.

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Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: December 11, 1997

For further information, please call: (512) 463-7981



### 31 TAC §§375.17, 375.19-375.22

The amendments and new sections are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, the SRF program.

Chapter 15, Subchapter J of the Texas Water Code are the statutory provisions affected by the proposed amendments.

§375.17. *Capitalization Grant Requirements.*

(a) All projects which receive assistance from the fund and will be constructed in whole or in part with funds directly made available by capitalization grants which require compliance with the Act, Title II, must meet the requirements under the Act, §§201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211,

218, 511(c)(1), and 513, and with the requirements of subsection (b) of this section. A brief description of the requirements is as follows.

(1)-(14) (No change.)

(15) Section 513 applies the Davis-Bacon Act, **40 U.S.C. 276**, to treatment works projects.

(b) All projects which receive assistance from the fund under this chapter shall satisfy the following federal requirements:

(1) (No change.)

(2) Davis-Bacon Act, 40 USC, see 276a-276a-5;]

(2) [(3)] Archeological and Historic Preservation Act of 1974, PL 93-291;

(3) [(4)] Clean Air Act, 42 USC 7506(c);

(4) [(5)] Coastal Barrier Resources Act, 16 USC 3501 et seq;

(5) [(6)] Coastal Zone Management Act of 1972, PL 92-583, as amended;

(6) [(7)] Endangered Species Act, 16 USC 1531, et seq;

(7) [(8)] Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(8) [(9)] Executive Order 11988, Floodplain Management;

(9) [(10)] Executive Order 11990, Protection of Wetlands;

(10) [(11)] Farmland Protection Policy Act, 7 USC 4201 et seq;

(11) [(12)] Fish and Wildlife Coordination Act, PL 85-624, as amended;

(12) [(13)] National Historic Preservation Act of 1966, PL 89-665, as amended;

(13) (14)] Safe Drinking Water Act, §1424(e), PL 92-523, as amended;

(14) [(15)] Wild and Scenic Rivers Act, PL 90-542, as amended;

(15) [(16)] Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;

(16) [(17)] Clean Air Act, §306 and Clean Water Act, §508, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;

(17) [(18)] Age Discrimination Act, PL 94-135;

(18) [(19)] Civil Rights Act of 1964, PL 88-352;

(19) [(20)] PL 92-500, §13; Prohibition against sex discrimination under the Federal Water Pollution Control Act;

(20) [(21)] Executive Order 11246, Equal Employment Opportunity;

(21) [(22)] Executive Orders 11625 and 12138, Women's and Minority Business Enterprise;

(22) [(23)] Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);

(23) [(24)] Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646; and

(24) [(25)] Executive Order 12549, Debarment and Suspension.

§375.19. *Distribution of Funds.*

(a) Notice of Availability of Funds. Because this chapter imposes requirements greater than those in SRF funding under Chapter 363 of this title (relating to Financial Assistance Program), the board generally provides lower interest rates for projects funded under this chapter. The board will limit funding under this chapter only to that dollar amount of projects reasonably necessary to meet federal requirements. The executive administrator, upon determining that it is necessary to seek projects to be funded under the requirements of this chapter, will provide notice by publication in the Texas Register and by direct mail to political subdivisions included in the project priority list of the availability of funds. The notice shall specify the approximate dollar amount of projects that the board intends to fund through this chapter.

(b) Limitation on Maximum Loan Amount. For every notice of availability of funds pursuant to subsection (a) of this section, the maximum amount of funding that will be available to a single application will be limited to 25% of the funds available.

(c) Exception. The board will not accept for funding under this chapter projects for which the board already has closed a loan under Chapter 363 of this title (relating to Financial Assistance Programs).

(d) Method for Distribution of Funds. Applications will be considered on a first come, first served basis based upon the date the application is considered to be complete and ready for board action unless a fund shortage exists.

(e) A fund shortage is considered to exist when on the first business day of the month prior to the board meeting the cumulative amount of funds previously committed pursuant to subsection (a) of this section, plus the amount of funds required to fund all applications which are complete and ready for scheduling for board action exceeds the amount of funds identified as available for such funding in the notice under subsection (a) of this section. Applications are considered to be complete and ready for board action if they meet the requirements of §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Fiscal Data), and §375.34 of this title (relating to Required Legal Data) and either both §375.35 of this title (relating to Required Environmental Review and Determinations) and §375.36 of this title (relating to SRF Engineering Plan) of this title or §375.40 of this title (relating to Pre-Design Funding Option).

(f) Applications which are ready for scheduling for board action at the time a fund shortage occurs will be presented for board action under this chapter as follows:

(1) first, applications for treatment works in the order of their priority ranking in accordance with §375.20 of this title (related to Rating Process);

(2) next, if additional funds are available, to applications for implementing management programs for nonpoint source pollution under the Act, §319 in the order of the receipt of completed applications; and

(3) next, if additional funds are available, applications for developing and implementing conservation and management plans under the National Estuary Program under the Act, §320 in the order of the receipt of completed applications.

(g) Funds will be made available to applicants under the provisions of subsection (f) of this section in the order specified until

available funds identified in subsection (a) of this section, have been utilized. If funds are available under this chapter for only part of an application, the remainder of the project may be funded under the SRF interest rate associated with loans under Chapter 363, Subchapter B of this title (relating to Financial Assistance Programs). Applications for projects for which no funds are available under this chapter will be considered under Chapter 363, Subchapter B of this title (relating to Financial Assistance Programs), unless the applicant indicates it does not want to proceed under such chapter.

*§375.20. Rating Process.*

(a) The rating process will be used to rate treatment works if a funds shortage exists under §375.19 of this title (related to Distribution of Funds). The rating process is designed to achieve optimum water quality management, consistent with public health and water quality goals, and to give consideration to the varying populations of the state's political subdivisions.

(1) In situations where the application includes line work and sewage treatment plant work, and/or includes more than one sewage treatment plant, the application will be given the rating calculated for the principal project, type of work or the single facility which comprises the majority of the cost. The criteria used to rate applications and the number of points assignable to each criterion shall be as follows.

(A) Applications in which the principal project is a sewage treatment plant or lines which are at 90% or greater of their rated capacity as reported to the commission will receive three points.

(B) Applications in which the principal project is a sewage treatment plant or lines which are 75% or greater but less than 90% of their rated capacity as reported to the commission will receive two points.

(C) Applications in which the principal project is a sewage treatment plant or lines which are 65% or greater but less than 75% of their rated capacity as reported to the commission will receive 1.5 points.

(D) Applications in which the principal project is under a schedule imposed by a court order, EPA administrative order, or commission enforcement order which requires initiation of construction within 18 months will receive one point.

(E) Applications in which the principal project is required to meet a higher level of treatment than required by their current permit or in which the applicant elects not to discharge in order to avoid higher levels of treatment will receive 1.5 points.

(F) Applications in which the principal project will provide service to areas which have no sewerage systems and which have documented public health problems will receive two points.

(G) Applicants which are proposing to construct nonconventional, innovative, or alternative treatment or collection systems will receive one point.

(H) Applicants having jurisdiction over a population of 1,000 or less will receive three points.

(I) Applicants having jurisdiction over a population greater than 1,000, but less than 2,500 will receive 2.5 points.

(J) Applicants having jurisdiction over a population of 2,500 or greater, but less than 10,000 will receive two points.

(K) Applicants having jurisdiction over a population of 10,000 or greater, but less than 100,000 will receive 1.5 points.

(L) Applicants having jurisdiction over a population of 100,000 or greater will receive one point.

(M) Applicants whose proposed project will create or upgrade a system that qualifies as a regional system under the definition of Texas Water Code, §17.001(24), will receive one point.

(b) The rating score will be the sum of the points assigned to the application under all criteria which are applicable to the application.

(c) In the event more than one applicant receives the same rating score, funding will first be made available to the applicant(s) whose sewage treatment plant(s) or lines are at the greatest percentage of their rated capacities.

(d) Where the existing treatment facilities will be abandoned and sewage diverted to a different location, the diversion line will be given the rating score of the treatment facilities to be abandoned.

*§375.21. Intended Use Plan.*

(a) Each fiscal year the board shall prepare an intended use plan to meet the requirements of the Act, §606(c), and to assist the board in its financial planning.

(b) The process for listing projects in the intended use plan will be as follows.

(1) On or before April 1 each year the executive administrator will solicit project information from entities desiring to have their projects placed on the subsequent year's intended use plan. The required project information will consist of:

(A) a description of the proposed facilities;

(B) the status of any required permit application, including projected effluent limitations;

(C) the estimated total project cost;

(D) an estimated project schedule; and

(E) a statement as to whether the applicant is under enforcement by EPA or the commission.

(2) The required information must be submitted not later than July 1 to be included in the draft intended use plan. Projects will be listed in alphabetical order.

(3) After a public hearing, the intended use plan will be presented to the board for consideration at a regularly scheduled meeting.

(c) Applicants requesting funding which are not listed on an intended use plan, but wish to proceed prior to the next year's intended use plan, will be added to the current intended use plan and considered for financial assistance from the SRF. These projects will be considered for funding in the same manner as listed projects.

*§375.22. Administrative Cost Recovery.*

(a) General. The board will assess charges for the purpose of recovering administrative costs of all recipients of SRF financial assistance who receive binding commitments after the effective date of this section.

(b) Payment Options. Recipients of binding commitments made after the effective date of this section will select payment options one or two as provided in subsection (c) or (d) of this section.

(c) Option One: Origination Charge Only. Pursuant to this option, a loan origination charge will be assessed of 2.25% of the SRF loan amount, excluding the amount of the origination charge. The loan origination charge is a one-time charge that is due and

payable at the time of loan closing. The loan origination charge may be financed as a part of the SRF loan.

(d) Option Two: Origination Charge and Servicing Charge.

(1) Pursuant to this option, both a loan origination charge and a servicing charge will be assessed.

(2) The loan origination charge will be 1.65% of the SRF loan amount, excluding the amount of the origination charge, and will be due and payable at the time of loan closing. The loan origination charge may be financed as a part of the SRF loan.

(3) The servicing charge will be 0.15% of the SRF loan, excluding the amount of the origination charge, and is due and payable annually at the time of the interest only payment date. A schedule of servicing charges will be calculated at the time of loan closing for the life of the SRF loan. In the event of early payoff of a loan, all remaining servicing charges calculated in this subsection must be paid in full at the time of the payoff.

(e) Administrative Cost Recovery Fund. Charges collected according to this section shall be deposited into the Administrative Cost Recovery Fund.

(f) Use of Funds. Monies deposited into the Administrative Cost Recovery Fund shall be used only for administration of the SRF program, unless transferred pursuant to subsection (g) of this section.

(g) Transfer of Funds. Subject to subsection (f) of this section, the board may authorize transfer of funds from the Administrative Cost Recovery Fund into the SRF Program Account and used for any purpose for which other funds in the SRF Program Account can be used.

(h) Investment of Funds. Monies in the Administrative Cost Recovery Fund shall be invested in authorized investments as provided by board order, resolution, or rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713944

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

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For further information, please call: (512) 463-7981



### 31 TAC §375.52

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, the SRF program.

Chapter 15, Subchapter J of the Texas Water Code are the statutory provisions affected by the proposed amendments.

§375.52. *Formal Action by the Board.*

(a) (No change.)

(b) Fixed Rates. The fixed interest rates for SRF loans under this chapter are set at rates 120 basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) or

(2) of this subsection. The fixed rate index rates shall be established for each borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales or the 90 index of the Delphis Hanover Corporation Scale for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale.

(1) For borrowers which utilize Option One under §375.22(c) [§375.21(c)] of this title (relating to Administrative Cost Recovery) an additional 30 basis points reduction will be used, for total fixed interest rates of 150 basis points below the fixed index rates for such borrower.

(2) For borrowers which utilize Option Two under §375.22(d) [§375.21(d)] of this title (relating to Administrative Cost Recovery) an additional 48 basis points reduction will be used, for total fixed interest rates of 168 basis points below the fixed index rates for such borrower.

(c)-(d) (No change).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713945

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: December 11, 1997

For further information, please call: (512) 463-7981



## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

#### Subchapter JJ. Cigarette and Tobacco Products Regulation [Advertising Fee]

##### 34 TAC §3.1202

The Comptroller of Public Accounts proposes new §3.1202, concerning warning notice signs. Senate Bill 55, adopted by the 75th Legislature, 1997, requires the comptroller to determine the design and size of the warning notice signs that must be displayed by each person who sells cigarettes or tobacco products at retail or by vending machines. The signs give notice to retailers, employees, and customers that the law prohibits the sale and provision of tobacco products to minors. The rule also describes the comptroller's responsibility to distribute on request the warning notice signs without charge to any person who sells cigarettes or tobacco products.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the new rule will have no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that for each year of the first five years, the new rule would benefit the public by implementing the warning notice sign provision in Senate Bill 55, which seeks to reduce the consumption of cigarettes and tobacco products by minors. There is no anticipated significant economic cost to

the public. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The new rule would have no significant impact on individuals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions assigned to the comptroller by law, and by the Health and Safety Code, §161.084, which provides that the comptroller by rule will determine the design and size of the required signs.

The new section implements the Health and Safety Code, §161.084.

*§3.1202. Warning Notice Signs.*

(a) Warning notice signs. Each person who sells cigarettes or tobacco products at retail or by vending machines must post a warning notice sign in a location that is conspicuous to all employees and customers and that is close to the cash register, check-out stand, or vending machine where cigarettes or tobacco products may be purchased.

(b) Sign distribution. The comptroller upon request will provide the warning notice signs without charge to any person who sells cigarettes or tobacco products, including distributors or wholesale dealers of cigarettes or tobacco products in this state for distribution to persons who sell cigarettes or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection. Requests for the warning notice signs may be made by calling the Comptroller of Public Accounts at 1-800-252-5555, or by writing to the attention of the Tax Policy Division, Comptroller of Public Accounts, 111 West 6th Street, Austin, Texas, 78701-2913. In Austin, call 463-4600. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621. A request must include the number of signs needed, and the person and address to whom the signs are to be mailed.

(c) Alternate signs. Retailers, distributors, and wholesale dealers may develop their own warning notice signs provided the signs meet minimum size and design specifications, including wording and font size, described in subsection (d) of this section. A retailer, distributor, or wholesale dealer may submit a sample of its proposed sign for review to the address as noted above.

(d) Sign design and minimum size requirements. The design, minimum size, and placement location of each sign are as follows.

(1) Design. Each sign must be designed according to the following:

(A) it must contain the following statutory language: "PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING 1-800-345-8647."

(B) retailers must display the English version. The comptroller will make a Spanish version available. Both the Spanish and English versions may be posted.

(2) Size and Placement. The sign to be posted on or near:

(A) the cash register or check-out stand must be no less than 8-1/2 inches wide by 14 inches in length. The font size for the statutory language that must appear on the sign must be no less than 14-point type;

(B) the vending machines must be no less than 3 inches wide by 7 inches in length. The font size for the statutory language that must appear on the sign must be no less than 10-point type.

(e) Effective Date. The warning notice signs must be displayed in the appropriate locations beginning January 1, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713936

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-3699



**34 TAC §3.1203**

The Comptroller of Public Accounts proposes new §3.1203, concerning approved seller training programs. Senate Bill 55, enacted by the 75th Legislature, 1997, amended the Health and Safety Code, Chapter 161, and the Tax Code, Chapters 154 and 155, and authorized the comptroller to establish the minimum curriculum requirements for approved seller training programs. The seller training programs are intended to provide persons engaged in the retail sales or delivery of cigarettes or tobacco products with training and information about the provisions in the new law that prohibit the sale or delivery of cigarettes or tobacco products to minors.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period, the new rule will have no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that for each year of the first five years, the new rule would benefit the public by implementing Senate Bill 55 approved seller training program provisions which seek to reduce the consumption of cigarettes and tobacco products by minors. There is no anticipated significant economic cost to the public. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The new rule would have no significant impact on individuals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions assigned to the comptroller by law, and Tax Code, §154.1143 and §155.0593, which

provides that the comptroller shall adopt rules and policies establishing the minimum requirements for approved seller training programs.

The new section implements the Tax Code, §154.1143 and §155.0593.

*§3.1203. Approved Seller Training Programs.*

(a) Definitions. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Application - The form provided by the comptroller's office for use by persons interested in performing training under this section.

(2) Cigarettes - Has the meaning assigned by Tax Code, Chapter 154.

(3) Second party sales - A sale which results in the provision of tobacco products to a minor, even though the purchaser of the tobacco product is not necessarily a minor.

(4) Seller - Any person who sells cigarettes or tobacco products in this state.

(5) Tobacco products - Has the meaning assigned by Tax Code, Chapter 155.

(b) Application process. In order for a vendor to be certified to provide employers and employees engaged in the retail sales of cigarettes or tobacco products with training regarding provisions in the Health and Safety Code, Chapter 161 and in the Tax Code, Chapters 154 and 155, regarding regulation of sales, distribution, and use of tobacco products, the vendor's training program must meet the minimum curriculum requirements established by the comptroller and be certified by the comptroller. Vendors must make application to the comptroller's office on a prescribed application form. The comptroller's office will review qualified applications and certify vendors interested in providing a seller training program.

(c) Curriculum information. Vendors interested in obtaining certification must apply in writing and provide a written description detailing curriculum information, including:

- (1) the presentation;
- (2) specific course objectives;
- (3) academic content;
- (4) learning activities;
- (5) audio-visual materials, if any;
- (6) written materials (including instructor manual and participant workbook); and
- (7) course evaluation or feedback forms.

(d) Curriculum requirements. The curriculum of the training program presented should include, but is not limited to, the following components.

(1) Component One - tobacco-related health hazards. Statistical information regarding tobacco-related health hazards as published by the U.S. Food and Drug Administration must be included in this component.

(2) Component Two - federal and state laws. Discussion and comparison of the provisions of federal law with the provisions of state law pertaining to minors and tobacco must be included in

this component. In particular, this component must include a review and explanation of all provisions relating to:

(A) prohibiting the distribution of cigarettes or tobacco products to minors;

(B) prohibiting the purchase, possession, or consumption of cigarettes or tobacco products by minors (citing examples of tobacco products included);

(C) the warning notice signs for retail locations;

(D) statistics on tobacco usage by adults and minors;

(E) the placement of tobacco products in retail locations.

(3) Component Three - detection of minors. This component must identify and discuss:

(A) observation techniques for determining when a customer is a minor;

(B) common physical and behavioral signs of under-age status; and

(C) behaviors indicative of adolescence, including current clothing trends and fads, and physical appearance preferences, according to generally recognized experts in the field.

(4) Component Four - personal identification. This component must:

(A) identify, discuss, and provide actual samples of acceptable forms of identification, including, but not limited to:

(i) a valid state driver's license issued by the Texas Department of Public Safety; and

(ii) other state or U.S. government issued forms of identification (with photograph).

(B) identify, discuss, and provide actual samples of unacceptable forms of identification including, but not limited to:

(i) a temporary state driver's license;

(ii) a birth certificate;

(iii) a school or work ID;

(iv) a social security card; and

(v) a professionally printed identification card.

(C) explain how to detect invalid identification documents used in attempts to establish proof of age and provide examples of the following:

(i) unofficial documents that look similar to official documents;

(ii) types of document counterfeiting and alteration; and

(iii) warning signs of document counterfeiting and alterations.

(5) Component Five - second party sales. This component must:

(A) explain and define second party sales; and

(B) provide examples of second party sales including, but not limited to, the following:

(i) a minor loitering outside a store in the store parking lot;

(ii) a minor loitering around a store, either inside or outside, after having been refused a tobacco purchase; and

(iii) a minor randomly approaching an adult customer to solicit the adult customer to purchase tobacco products and giving the adult customer money.

(6) Component Six - refusing a sale. This component must:

(A) identify and discuss techniques to prevent an illegal sale of tobacco products to a minor or second party;

(B) identify and discuss techniques to terminate an illegal sale of tobacco products to a minor or second party; and

(C) provide examples of words and actions that may be used by a seller to amicably avoid or terminate illegal attempts to purchase tobacco by a minor.

(e) Class length. The time length of the seller training class should be between two and three actual clock hours, including class breaks.

(f) Notice of certification or denial. The comptroller shall notify each applicant with a letter of certification or denial, including reasons for the denial, within 15 business days from the date the application is received by the comptroller. The certification or denial letter will be mailed to the address on the vendor's application.

(g) Certification. A qualified vendor is certified to provide seller training unless the certification is revoked or suspended by the comptroller.

(h) Denial. Applications for certification will be denied based on the following factors:

(1) the curriculum information submitted does not meet the minimum requirements set out in subsection (d) of this section;

(2) the application is incomplete;

(3) the applicant is currently delinquent in the payment of any tax or fee collected by the comptroller.

(i) Administrative hearing. The applicant may request an administrative hearing within 15 business days after receipt of the denial letter. The hearing will be governed by the provisions of §§1.1- 1.42 of this title (relating to Practice and Procedure).

(j) Certification revocation or suspension. The comptroller may, after notice and opportunity for a hearing, revoke or suspend a vendor's certification upon finding that the seller training classes provided by a vendor fail to comply with the comptroller's standards and requirements for seller training programs described in subsections (c), (d), and (e) of this section, or the vendor becomes delinquent in the payment of any tax or fee collected by the comptroller. The comptroller will send the vendor written notification of the reasons for the revocation or suspension.

(k) Certification reinstatement. The comptroller may reinstate the vendor's certification after receiving proof that the vendor has satisfied all the comptroller's standards and requirements for seller training as provided under subsections (c), (d), and (e) of this section, and the vendor is current in the payment of any tax or fee obligation due the comptroller.

(l) Notice of classes scheduled. Vendors must provide the comptroller's office written notification of the date, time, and location

of scheduled training classes at least five business days prior to the date training classes will be conducted.

(m) Vendor reporting requirements.

(1) By the 15th day of the month, each certified vendor must report data for each training class completed during the previous month. The data must include:

(A) a class roster with the name, driver's license number, and date of birth of each participant;

(B) the total number of classes conducted for the month;

(C) the total number of participants that attended each class; and

(D) the total number of participants that successfully completed the class.

(2) the reports must be mailed to the Texas Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas, 78774-0100.

(n) Class cancellations. Vendors must notify the comptroller's office by telephone of any training class cancellations prior to the actual training session date by calling 1-800-248-4093.

(o) Class monitoring. Training classes may be monitored unannounced by the comptroller or a comptroller's representative to evaluate the curriculum presentation and the classroom environment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713938

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-3699



### 34 TAC §3.1204

The Comptroller of Public Accounts proposes new §3.1204, concerning administrative remedies for violations of Health and Safety Code, Chapter 161, Subchapter H or K. Senate Bill 55, adopted by the 75th Legislature, 1997, added §154.1142 and §155.0592 to the Tax Code authorizing the comptroller to administratively assess a fine for certain violations of the Health and Safety Code.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period, the new rule will have no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that for each year of the first five years, the new rule would benefit the public by implementing the Senate Bill 55 provision allowing the Comptroller to administratively assess a fine for violations relating to the sale of tobacco products to minors and the advertising of tobacco products, provisions which seek to reduce the consumption of cigarettes and tobacco products by minors. There is no anticipated significant economic cost of the public. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The new rule would have no significant impact on individuals.



Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions assigned to the comptroller by law.

The new section implements Tax Code, §154.1142 and §155.0592.

*§3.1204. Administrative Remedies for Violations of Health and Safety Code, Chapter 161, Subchapter H or K.*

(a) Definitions. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Place of business - Has the meaning assigned by the Tax Code, §154.001 and §155.001.

(2) Permit holder - Has the meaning assigned by the Tax Code, §154.001 or §155.001.

(3) Retailer - Has the meaning assigned by the Tax Code, §154.001 or §155.001.

(b) Notice of Violations. The comptroller receives notice of a violation of Health and Safety Code, Chapter 161, Subchapter H or K from:

(1) the Enforcement or Criminal Investigations Divisions of the comptroller's office;

(2) local law enforcement or Drug Abuse Resource Education (DARE);

(3) a municipal court or a justice of the peace court; or

(4) a complaint reported by a caller on the tobacco hotline.

(c) Disciplinary Actions. The comptroller after receiving notice of violation may take the following actions:

(1) if during the preceding 12 months at the place of business for which a permit is issued, the permit holder has not been found to have violated the Health and Safety Code, Chapter 161, Subchapter H or K, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$500;

(2) if during the preceding 12 months at a place of business for which a permit is issued, the permit holder has been found to have violated the Health and Safety Code, Chapter 161, Subchapter H or K, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$750;

(3) if during the preceding 12 months at a place of business for which a permit is issued, the permit holder has been found to have violated the Health and Safety Code, Chapter 161, Subchapter H or K at least twice, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$1000 or suspend the permit for that place of business for not more than three days; or

(4) if during the preceding 12 months the permit holder has been found to have violated Health and Safety Code, §161.082(b), on four or more previous and separate occasions at the same place of business for which a permit is issued, the comptroller shall revoke the permit.

(A) The revocation of the retailer's permit shall be governed by the provisions in Tax Code, §154.114 and §155.059.

(B) A retailer whose permit has been revoked under paragraph (4) of this subsection may not apply for a retailers permit for the same place of business before the expiration of six months after the effective date of the revocation.

(d) The comptroller will send written notice to the permit holder informing the permit holder that a violation has occurred. If the comptroller so offers, the permit holder may have the option to waive the right to a hearing and pay a lesser administrative fine or agree to a lesser administrative remedy.

(e) If the permit holder does not respond to the written notice of violation within 20 calendar days or requests a hearing, a hearing will be set. The notice of the setting of the hearing shall be governed by §§1.1-1.42 of this title (relating to Practice and Procedure).

(f) The permit holder will have 20 calendar days in which to respond to the notice of the setting of the hearing.

(g) An administrative hearing will be held at the office of the Comptroller of Public Accounts in Austin, Texas. The recourse for a permit holder who does not agree with the administrative decision will be governed by the provisions of Tax Code, Chapter 111; Government Code, Chapter 2001; and §§1.1-1.42 of this title.

(h) The burden of proof in an administrative hearing pursuant to this rule is by a preponderance of the evidence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713937

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-3699

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## Part V. Texas County and District Retirement System

### Chapter 103. Calculations or Types of Benefits

#### 34 TAC §103.5

The Texas County and District Retirement System proposes the adoption of new §103.5, concerning the time and manner for the required distribution of benefits. The new section is being proposed to implement the distribution requirements of the Government Code, Chapter 841, §841.010. Specifically, the language of that statute requires that benefit distributions be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code which had established distribution requirements for qualified plans. The Texas County and District Retirement System is a qualified plan.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Horton also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the Texas County and District Retirement System will retain its status as a qualified plan thereby preserving for its members the right to defer income taxation of accrued benefits until distribution. There will be no effect on small businesses and there is no anticipated economic costs to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The new section is proposed under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

The Government Code, Chapter 841, Subchapter A, §841.010 is affected by this proposed new rule.

*§103.5. Benefit Distribution Requirements.*

(a) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Proportionate retirement system - A public retirement system other than the Texas County and District Retirement System that participates in the Proportionate Retirement Program.

(2) Required distribution date - March 31 of the year following the later of the year in which the member separates from service or the year in which the member attains age 70 and one-half.

(3) Rule-year - A year of service credited in participating subdivisions that have adopted a rule providing for retirement eligibility when the addition of a member's years of service and years of attained age produces a sum equal to or in excess of a specific number.

(4) Separates from service - The termination of employment with all subdivisions participating in the System.

(b) General Rules:

(1) A member who has separated from service with all participating subdivisions may receive a refund of the accumulated contributions in the member's individual account at any time following separation from service that is prior to the member's required distribution date.

(2) A member must receive a refund of the accumulated contributions in the member's individual account or retire from the System on or before his/her required distribution date.

(3) The remaining interest of a deceased retiree's benefit must continue to be distributed as rapidly as the method of distribution being used before the retiree's death.

(4) The entire interest that becomes payable because of the death of a member who has a designated beneficiary as defined in regulations to Section 401(a)(9) of the Internal Revenue Code must be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary.

(5) The entire interest that becomes payable because of the death of a member who does not have a designated beneficiary must be distributed within five years of the death of the member.

(c) Application:

(1) A member who is eligible to retire on the basis of credited service in this System alone must receive a refund of the accumulated contributions in the member's individual account or retire on or before the member's required distribution date without regard to whether that member is an active participant in a proportionate retirement system or has credited service in a proportionate retirement system.

(2) A member whose total credited service in this System and all proportionate retirement systems equals less than four years, who is not actively participating in a proportionate retirement system, and who is not eligible to retire under this System on the member's required distribution date must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date.

(3) A member who has less than four rule-years of credited service, who has no credited service in a proportionate retirement system, and who is not otherwise eligible to retire at the member's required distribution date, must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date.

(4) A member who has four or more rule-years of credited service in this System, who has no credited service with a proportionate retirement system and who is not otherwise eligible to retire at the member's required distribution date, must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date, or must retire with an actuarially reduced annuity on the member's required distribution date. The annuity under this provision is adjusted because of the early commencement of the benefit and is actuarially equivalent to the annuity that would otherwise be payable commencing at the member's retirement eligibility date.

(5) The required distribution date for an inactive member of this System who has attained age 70 and one-half and who continues to actively participate in a proportionate retirement system is March 31 of the year following the year in which the member becomes eligible to retire on the basis of credited service in this System alone.

(6) A monthly annuity payable because of the death of a member that would extend beyond the life expectancy of the designated beneficiary, or that would extend beyond five years from the date of death of the member if payable to other than a designated beneficiary, will be converted to a monthly annuity having an equivalent present value that is calculated using a 7.0% interest rate and payable over the life expectancy of the designated beneficiary or calculated using a 7.0% interest rate and payable over a 60 month period if payable to other than a designated beneficiary. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas on October 20, 1997. Terry Horton Director Texas County and District Retirement System

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713942

Terry Horton

Director

Texas County and District Retirement System

Proposed date of adoption: December 4, 1997

For further information, please call: (512) 328-8889

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## Chapter 105. Creditable Service

### 34 TAC §105.4

The Texas County and District Retirement System proposes the adoption of new §105.4, concerning the granting of current service credit for qualified service performed in the uniformed services by eligible members of the System. The new section is being proposed to implement the requirements of section the Texas Government Code, Chapter 843, §843.603. Specifically, with respect to service qualifying under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. 4301 et seq.), §843.603 requires that contributions, benefits and service credit be provided to eligible members in accordance with Section 414(u) of the Internal Revenue Code.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state government as a result of enforcing or administering the rule. Mr. Horton has determined that for each year of the first five-year period the rule is in effect, there may be fiscal implications for participating local governments as a result of enforcing or administering the rule; however, such fiscal implications are expected to be actuarially insignificant.

Mr. Horton also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a reduction in the loss of retirement benefits suffered by public employees participating in the Texas County and District Retirement System who interrupt their employment to serve honorably in the uniformed services. There will be no effect on small businesses and there is no anticipated economic costs to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The new section is proposed under the Government Code, Chapter 845, Subchapter B, Section 845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

The Government Code, Chapter 843, Subchapter G, §843.603 is affected by this proposed new rule.

*§105.4 . Credited Service Under The Uniformed Services Employment And Reemployment Rights Act.*

(a) Pursuant to §843.603, an eligible member may receive current service credit for service in the uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act (the USERRA) (38 U.S.C. §4301 et seq.). Notwithstanding any provision to the contrary, the rights and benefits of an eligible member under the Texas County and District Retirement System (the System) shall not be less than those rights and benefits provided by the USERRA.

(b) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Eligible member - An employee of a participating subdivision who is or would be considered to be employed in a position eligible for membership but who leaves employment with that subdivision to perform service in the uniformed services; whose

employer was notified of the obligation or intention of the employee to perform service in the uniformed services; who is released or discharged from such service on or after December 12, 1994 under honorable conditions; whose cumulative period of service in the uniformed services with respect to that participating subdivision does not exceed five years not including periods excluded under 38 U.S.C. §1412(c); who applies for reemployment with that participating subdivision within 90 days of release or discharge from the uniformed services, or after recovery from an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services (but such recovery period does not exceed two years); and who is reemployed by the participating subdivision.

(2) Uniformed services - The Armed Forces of the United States of America; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

(3) Service in the uniformed services - The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform such duty.

(4) Participating subdivision - A subdivision as defined in §841.001(14) of the Texas Government Code that is participating in the Texas County and District Retirement System at the time the eligible member leaves employment with the subdivision to perform service in the uniformed services; a subdivision that is not participating in the System at the time the employee leaves employment with the subdivision to perform service in the uniformed services but commences participation during the period of the employee's performance of duty in a uniformed service; or a subdivision participating in the System that is a successive employer as described in §843.203 of the Texas Government Code or successor in interest to the subdivision from which the eligible member left employment to perform service in the uniformed services.

(c) Certification of Eligibility by Participating Subdivision  
An eligible member will be credited with current service in accordance with the USERRA upon certification by the participating subdivision on forms provided by the System:

(1) that the eligible member's reemployment application is timely;

(2) that the eligible member has not exceeded the service limitations set forth in the USERRA;

(3) that the eligible member was not released or discharged from the uniformed service under other than honorable conditions;

(4) the period in which the eligible member performed service in the uniformed services;

(5) that the eligible member did not receive service credit for the period of uniformed service;

(6) the estimated compensation that the eligible member would have received from the subdivision but for the period of service in the uniformed services; and

(7) the eligible member's date of reemployment.

(d) Crediting of Current Service under the USERRA

(1) An eligible member shall be credited with one month of current service credit for each month or part of a month in which both of the following occur:

(A) the eligible member performed service in the uniformed services, and

(B) the participating subdivision participated in the System.

(2) On or before the last day of the fifth calendar year following the year in which the eligible member was reemployed, the eligible member may, but is not required to, deposit with the System any or all employee contributions that would have been deposited to the member's individual account for each period during which the member performed service in the uniformed services if the eligible member had been employed with the participating subdivision during the period of uniformed service. Deposits under this provision are subject to the following rules:

(A) The total deposits may not exceed the amount the eligible member would have been required to contribute had the eligible member remained continuously employed by the participating subdivision throughout the period of service in the uniformed services.

(B) The compensation upon which allowable deposits will be calculated is the estimated compensation that the eligible member would have received from the subdivision but for the period of service in the uniformed services.

(C) For purposes of determining the amount of current service credit and allowable monetary credit, months of uniformed service and estimated compensation shall be calculated from the later of the date the eligible member entered uniformed service or the date the participating subdivision commenced participation in the System.

(D) Within the allowable period for making deposits and subject to the maximum total amount of deposits, an eligible member may make deposits at any time and in any amount.

(E) Deposits must be paid directly to the System by the eligible member, will be treated as after-tax contributions, and may not be returned until the member terminates from all covered employment in this System.

(F) Deposits will be allocated prospective interest only, and in the same manner as interest is allocated on member contributions to individual accounts.

(G) Deposits, when received by the System, shall be credited to the eligible person's individual account and shall be considered to be contributions attributable to the months of uniformed service performed beginning with the earliest month of uniformed service.

(H) For vesting and funding purposes, current service credit, and any monetary credit arising from voluntary deposits, shall be considered as having been earned through service with the reemploying subdivision, and as having been credited during the period of uniformed service.

(I) An eligible member receiving service credit for a specific month pursuant to §843.603 may not receive service credit for the same month under any other provision of the Texas Government Code, Title 8, Subtitle F.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713941

Terry Horton

Director

Texas County and District Retirement System

Proposed date of adoption: December 4, 1997

For further information, please call: (512) 328-8889



## Chapter 107. Miscellaneous Rules

### 34 TAC §107.4

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas County and District Retirement System or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas County and District Retirement System proposes the repeal of §107.4, concerning the conformity with the benefit limitations under Section 415 of the Internal Revenue Code as amended by the enactment of Public Law 104-188. That federal law exempted qualified governmental plans from certain benefits limitations that qualified non-governmental plans must satisfy. In 1995, the 75th Texas Legislature amended the Government Code, Chapter 844, §844.007 to conform to Section 415 of the Internal Revenue Code. Prior to amendment, the Government Code, Chapter 844, §844.008(j) provided for a limitation of benefits but authorized the board of trustees to adopt rules to cause the plan to operate in conformance with Section 415 of the Internal Revenue Code as amended by Public Law 104-188. With the amendment of §844.007, this rule proposed for repeal is of no effect and no longer necessary to cause the System to operate in conformity with Section 415 of the Internal Revenue Code.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period following the repeal of the rule there will be no fiscal implications for state or local government as a result of the repeal of the rule.

Mr. Horton also has determined that for each year of the first five years following the repeal of the rule, the public benefit anticipated as a result of the repeal will be that the rules in the Texas Administrative Code being administered by the Texas County and District Retirement System will reflect and conform to the statutes governing the System. There will be no effect on small businesses and there is no anticipated economic costs to persons as a result of the proposed repeal.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The repeal is proposed under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to adopt rules necessary or desirable for the effective administration of the System.

The Government Code, Chapter 844, Subchapter A, §844.008 is affected by this proposed repeal.

*§107.4. Conformity with Internal Revenue Code: Preservation of Benefits.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713940

Terry Horton

Director

Texas County and District Retirement System

Proposed date of adoption: December 4, 1997

For further information, please call: (512) 328-8889



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **Part IX. Texas Commission on Jail Standards**

#### **Chapter 275. Supervision of Inmates**

##### **37 TAC §275.7**

The Commission on Jail Standards proposes new §275.7, concerning Supervision of Inmates to provide for the requirement of a use of force plan to be approved by the Commission prior to implementation.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Crump also has determined that for each year of the first five years the rule, as proposed, is in effect, the public benefits anticipated as a result of enforcing the rule, as proposed, will be to provide general guidelines for the use of force and restraint.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Flint H. Britton, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new section is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002, and 351.015.

##### *§275.7. Use of Force and Restraint Plan.*

Each Sheriff/Operator shall develop and implement a written use of force and restraint plan, approved by the Commission, governing the use of force to include the use of deadly force, restraint equipment, weapons, chemical agents, and canines in correctional facilities. The Use of Force and Restraint Plan shall include:

(1) the authority upon which the use of force or restraints will be used; the conditions for the type of force, including, but not limited to, inmate fights, assaults on officers, cell extractions, escapes,

rebellions and riots; and a realistic evaluation of the need for such force, restraints, weapons, chemical agents, or canines;

(2) provisions for all security staff to be trained annually on the use of force, restraints, weapons, chemical agents or canines, and the process in which documentation is to be made;

(3) provisions to ensure the level of force does not exceed that force necessary to control the situation;

(4) provisions for documentation and supervisory review of all incidents involving the use of force, restraints, weapons, chemical agents, or canines in the facility;

(5) a listing of authorized weapons and equipment to be used in cases where force or restraints are necessary; and

(6) that all information regarding an incident where force is used shall be made available to the Commission upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713800

Jack E. Crump

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-5505



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part XX. Texas Workforce Commission**

#### **Chapter 817. Child Labor**

The Texas Workforce Commission proposes repeals to §§817.1-817.8 and new §§817.1-817.5, 817.21-23, and 817.31-33, concerning Child Labor.

The repeals and new sections result in a rearrangement of the rules into a new format incorporating technical and clarity changes.

The technical changes include items such as changing "Texas Employment Commission" to "Texas Workforce Commission," changing "administrator" to "executive director," and changing "agency" to "commission." The technical changes are proposed to conform terms to those required by the Texas Labor Code, Chapter 51, and Texas Workforce Commission's enabling legislation. The clarity changes include items such as adding subchapters, breaking down old sections into several shorter sections, naming sections accordingly and adding clarifying language to the rules as needed. New language is proposed clarifying the expiration date of a special authorization for child actors employed as extras. A comparison of the new language and structure with the old language may be obtained from Jerry Ramos at (512) 795-6605.

Randy Townsend, Director of Finance, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

LaSha Barefield, Deputy Director of Labor Law Enforcement, Education & Regulation, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be to provide a clear understanding of the rules implementing and interpreting the provisions of the Texas Labor Code, Chapter 51, Employment of Children. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the proposed repeal and new rules.

Comments on the proposal may be submitted to Jerry Ramos, Child Labor Department, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; (512) 795-6605; facsimile number (512) 346-5047.

#### **40 TAC §§817.1–817.8**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed repeals affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

§817.1. *Definitions.*

§817.2. *Certificates of Age.*

§817.3. *Hardship Waiver of Hours Requirements for 14 and 15 Year Olds.*

§817.4. *Employment of 14 and 15 Year Old Children.*

§817.5. *Employment of 16 and 17 Year Old Children.*

§817.6. *Statement of Commission Intent.*

§817.7. *Restriction of Employment.*

§817.8. *Child Actors.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713918

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-8812



### **Subchapter A. General Provisions**

#### **40 TAC §§817.1–817.5**

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed new rules affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

§817.1. *Title and Purpose.*

(a) Title. These rules may be cited as the Texas Child Labor Rules.

(b) Purpose. The purpose of these rules is to implement and interpret the provisions of the Texas Labor Code, Chapter 51, Employment of Children.

§817.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant—A child or the child's parent, legal guardian, legal custodian, or prospective employer.

Child—An individual under 18 years of age.

Child actor—A child under the age of 14 who is to be employed as an actor or other performer.

Commission—Texas Workforce Commission.

Executive director—The executive director of the Texas Workforce Commission or the executive director's designee.

§817.3. *Employment of Children.*

Employment of children not permitted by Subchapter B of this Chapter (relating to Limitations on the Employment of Children), Subchapter C of this Chapter (relating to Employment of Child Actors), or the Texas Labor Code, Chapter 51, is prohibited.

§817.4. *Statement of Commission Intent.*

In adopting §817.21 of this title (relating to Limitations on the Employment of 14 and 15 Year Old Children) and §817.23 of this title (relating to Limitations on the Employment of 16 and 17 Year Old Children), the Commission intends for the federal child labor regulations to govern the employment of children in Texas unless a provision of this chapter or Texas Labor Code, Chapter 51, clearly indicates otherwise. The Commission so intends only to the extent the federal regulations are consistent with Texas Labor Code, Chapter 51.

§817.5. *Certificate of Age.*

(a) To request a certificate of age, an applicant must submit the following:

(1) a completed application on a form provided by the Commission;

(2) a recent photograph (color or black and white) approximately 1 1/2 inches by 1 1/2 inches, showing a full head shot of the applicant; and

(3) proof of age. A copy of one of the following documents is required as proof of age:

(A) birth certificate;

(B) baptismal certificate showing the date of birth;

(C) life insurance policy insuring the life of the child reflecting the date of birth;

(D) passport or certificate of arrival in the United States issued not more than one year prior to the date of application for certificate; or

(E) the school record or the school-census record of the age of the child, together with the sworn statement of a parent,

guardian, or person having custody of the child as to the age of the child and also a certificate signed by a physician specifying his opinion as to the age of the child, and the height, weight, and other facts relating to development upon which his opinion concerning age is based.

(b) Certificates of age are effective from the date of their issuance until the applicant reaches 18 years of age. No renewal is necessary, but lost certificates may be reissued upon new application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713919

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-8812



## Subchapter B. Limitations on the Employment Children

### 40 TAC §§817.21-817.23

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed new rules affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

*§817.21. Limitations on the Employment of 14 and 15 Year Old Children.*

The Commission adopts by reference §570.31 through §570.34 and §570.70 through §570.72 of Title 29 of the Code of Federal Regulations. The Commission adopts these regulations as state rules governing the employment of 14 and 15 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor Standards Act (FLSA), 29 United States Code §201, *et seq.* The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

*§817.22. Hardship Waiver of Hours Requirements for 14 and 15 Year Old Children.*

(a) An applicant applying for a hardship waiver from the limitations on hours worked for 14 and 15 year old children must obtain a certificate of age under the provisions of §817.5 of this title (relating to Certificate of Age) and file a hardship application. The applicant may file both applications concurrently.

(b) A hardship application must contain:

(1) full details of the prospective employment and the proposed hours to be worked;

(2) a written statement that it is necessary for the child to work to support himself or his immediate family, with supporting information;

(3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified; and

(4) a written statement from the prospective employer. The prospective employer's statement shall provide:

(A) that the child will be employed; and

(B) full details of the work, including rate of pay, hours to be worked, and expected duration of employment.

(c) A hardship application may contain any other information the applicant believes would support the granting of the waiver.

(d) All waivers shall be valid for one year unless established for a shorter period and may be extended at the sole discretion of the executive director.

(e) After all pertinent information has been reviewed by the Commission, the waiver will be granted or denied. If additional information is needed before a decision is made, the Commission may gather additional facts and schedule a conference to review the merits of the application with interested persons.

(f) At any conference the Commission will be represented by an employee designated by the executive director who shall make a written report to the executive director within 20 working days following the conference. The report shall contain a determination as to whether or not the waiver should be granted. Unless changed by the executive director, the initial determination shall remain in full force and effect. All interested parties will be advised in writing of the final determination of the Commission as soon as practicable. No appeal to the Commissioners is authorized.

(g) This proceeding is not a contested case under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

*§817.23. Limitations on the Employment of 16 and 17 Year Old Children.*

The Commission adopts by reference §570.50 through §570.68 of Title 29 of the Code of Federal Regulations. The Commission adopts these regulations as state rules governing the employment of 16 and 17 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor Standards Act (FLSA), 29 United States Code, §201, *et seq.* The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713920

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-8812



## Subchapter C. Employment of Child Actors

### 40 TAC §§817.31-817.33

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as

it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed new rules affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

*§817.31. Child Actor Authorization.*

(a) A child under 14 years of age may be employed in Texas as a child actor only by compliance with the provisions of this Subchapter.

(b) Every person applying for child actor authorization must submit:

(1) an application for authorization on a form provided by the Commission and signed by a parent, guardian, or person having custody of the child;

(2) proof of age; and

(3) a photograph that complies with §817.5 of this title (relating to Certificate of Age).

(c) An authorization is effective when issued and expires when the child reaches 14 years of age, unless the Commission establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

*§817.32. Application Exceptions.*

(a) Special authorization for child actors to be employed as extras is granted without the need for filing an application if the employer or its agent:

(1) communicates with the Commission prior to the actual work being performed, identifying the employer, the project, the approximate number of extras intended to be employed on the particular project, and the anticipated dates of employment;

(2) prior to employment, uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age;

(3) secures the written consent of a parent, guardian, or person having custody of the child to his or her employment as an extra on the particular project;

(4) notifies all affected school principals of the intent to employ their students as extras, furnishing such details concerning the nature and duration of the work as to give school authorities reasonable information concerning the proposed use of their students in the particular project; and

(5) submits a written post-production report to the Commission, within 10 days following the last day extras are employed, identifying the name, social security number, date of birth, and inclusive dates of employment for each child actor so employed, certifying compliance with Texas Labor Code, Chapter 51 and this Chapter 817 (relating to Child Labor).

(b) Special authorizations for extras are deemed effective upon employment and expire as soon as one of the following events occurs:

(1) the child reaches age 14;

(2) the child receives a Child Actor Authorization;

(3) the parent, guardian, or person having custody of the child revokes consent in writing; or

(4) the child's employment on the particular project by that employer ends.

*§817.33. Limitations on Employment of Child Actors.*

No child actor under 14 years of age may be employed:

(1) in a manner that results in a failure to receive class credits because of unexcused class absences, or any violation of the State Compulsory School Attendance Law, Texas Education Code, §25.085, either as it is presently worded or may hereafter be amended to read, or of any rules promulgated thereunder;

(2) in a position declared hazardous by the Commission;

(3) during hours that would not be within the limits set by Texas Labor Code, §51.013, for 14 and 15 year old children, except that the child is permitted, with parental consent, to work during otherwise prohibited hours, so long as the child does not work again for the same employer within 12 hours after completing work for the particular session and does not by being so employed work in excess of eight hours in one day or 48 hours in one week;

(4) where the child is required to use a dressing room that is simultaneously occupied by an adult or by a child of the opposite sex;

(5) where the child is not provided with a suitable place to rest or play;

(6) where the child is sent to wardrobe, makeup, or hair-dressing, unless the child is under the general supervision of the child's parent, guardian, or person having custody of the child if the parent, guardian or person having custody is physically present at the place of employment;

(7) where the child's parent, guardian, or person having custody of the child is prevented from being present at the place of employment while the child is working;

(8) where the child's parent, guardian, or person having custody of the child is prevented from being within sight and sound of the child at any time during employment; or

(9) for more than two consecutive school days during a school year in which the child is legally required to attend school without being furnished a tutor for the child's continuing education. The tutor shall be certified to teach in Texas by the Texas Education Agency or the State Board for Educator Certification, and shall make reasonable efforts to coordinate subjects and assignments with the child's classroom teachers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713921

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 1, 1997

For further information, please call: (512) 463-8812

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# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## **TITLE 1. ADMINISTRATION**

### **Part XII. Advisory Commission on State Emergency Communications**

#### **Chapter 252. Administration**

##### **1 TAC §252.5**

The Advisory Commission on State Emergency Communications (ACSEC) adopts new §252.5, concerning procedure for emergency communication districts adopting provisions of Health and Safety Code, Chapter 771 and ACSEC rules as authorized by recent legislation, without changes to the proposed text as published in the issue of the *Texas Register* (22 TexReg 7113).

H.B. 1324 from the 75th Legislative Session provides that an emergency communication district may voluntarily adopt ACSEC rules and provisions of Health and Safety Code, Chapter 771. This section establishes the procedures for a district to adopt provisions of Chapter 771 and ACSEC rules.

No comments were received regarding adoption of this new section.

The new section is adopted under the Health and Safety Code, Chapter 771, §771.051, which authorizes ACSEC to administer the implementation of statewide 9-1-1 service and provide assistance in the establishment and operation of 9-1-1 service.

The adopted new rule affects the Health and Safety Code, Chapter 771, §771.062.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713842

James D. Goerke

Executive Director

Advisory Commission on State Emergency Communications

Effective date: November 6, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 305-6911

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##### **1 TAC §252.6**

The Advisory Commission on State Emergency Communications (ACSEC) adopts new §252.6, concerning the adminis-

trative distribution of wireless 9-1-1 service fees, with minor changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7113).

H.B. 2129 from the 75th Legislative Session authorized ACSEC to impose a statewide 9-1-1 service fee on wireless telecommunications connections. This recent legislation provides that ACSEC shall distribute to each regional planning commission and emergency communication district a portion of the money collected that bears the same proportion to the total amount collected that the population of the area served by the commission or district bears to the total combined population of the areas served by a commission or district. This new rule establishes procedures for implementing the distribution to the 9-1-1 entities.

The Commission, in response to comments, made changes to clarify §252.6.

Written comments were received from the City of Addison, City of Dallas, and North Central Texas Council of Governments. The City of Addison noted that their population is only 10,000, but that as many as 100,000 people may be in or through the city as a daytime population. The City of Addison stated that this results in them having 179% more wireless 9-1-1 calls than a non-metropolitan city with a population of more wireless 9-1-1 calls than a non-metropolitan city with a population of 10,000. The City of Dallas commented the Advisory Commission on State Emergency Communications should issue (1) one check per month; (2) that there be a 9-1-1 service fee report with specific information accompanying the check; and (3) that wireless provider should provide an annual refusal to pay report. North Central Texas Council of Governments commented with regard to the separate distribution table, that they were aware of more current population data from the Texas State Data Center.

The Commission voted to adopt the proposed rule as modified. The proposed rule has not been modified to address the City of Addison's concerns. While the City of Addison may have a legitimate issue that wireless 9-1-1 call volume might be a better way to distribute the wireless emergency service fees, the Commission concluded that any change along those lines needs to be made by the Texas Legislature. The proposed rule has been modified to clearly address the City of Dallas' concern that distributions to 9-1-1 entities should be made monthly. The Commission believes that this was the Texas Legislature's intent in H.B. 2129. The proposed rule has not been modified, as requested by the City of Dallas, to require wireless service providers to submit annual refusal to pay reports because the Commission views this potential modification as outside the scope of the published rule. On

the other hand, the Commission preliminarily believes that requiring an annual refusal to pay report from wireless service providers may be a good practice that should be considered in the near future. The proposed rule has not been modified to provide the specific information requested to accompany the monthly distributions. The Commission concludes approval of the proportional distributions should make providing this individual information monthly with each distribution for each entity more burdensome and time consuming than is necessary to achieve appropriate and accurate distributions to all of the 9-1-1 entities.

The new section is adopted under the authority of Health and Safety Code, Chapter 771, §771.0711, which establishes a statewide 9-1-1 wireless emergency service fee and requirements for its distribution to regional planning commissions and emergency communication districts.

The adopted new rule affects the Health and Safety Code, Chapter 771, §771.0711.

§252.6. *Wireless Service Fee Proportional Distribution.*

The commission shall use the most recent annual estimate from the Texas State Data Center to proportionally distribute the wireless emergency service fee to regional planning commissions and emergency communication districts. The commission shall approve the specific proportional distributions for a given year at an open meeting before or during October of each year. At least two weeks before that open meeting, commission staff shall submit for publication in the Texas Register and mail to the each regional planning commission and emergency communication district the proportional distributions for that particular year. This will allow regional planning commissions and emergency communication districts to comment on the proportional distribution before or during the open meeting. The commission shall distribute the wireless emergency service fees monthly and distribute any interest earned on the wireless emergency service fees annually.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713843

James D. Goerke

Executive Director

Advisory Commission on State Emergency Communications

Effective date: November 6, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 305-6911

◆ ◆ ◆  
**Chapter 255. Finance**

**1 TAC §255.10**

The Advisory Commission on State Emergency Communications (ACSEC) adopts new §255.10, concerning notification by a regional planning commission of a service provider's or a business service user's failure to timely deliver 9-1-1 fees, without changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7114).

The new section establishes the procedure to be used by a regional planning commission or designated public agency to notify the ACSEC of a service provider's or a business service user's failure to timely deliver 9-1-1 fees.

No comments received regarding adoption of this new section.

The new section is adopted under the Health and Safety Code, Chapter 771, §771.051, which authorizes ACSEC to administer the implementation of statewide 9-1-1 service, and 771.077, which specifically provides for the establishment of procedures to be used by a regional planning commission to notify ACSEC of a service provider's or business service user's failure to timely deliver 9-1-1 fees.

The adopted new rule affects the Health and Safety Code, Chapter 771, §771.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713841

James D. Goerke

Executive Director

Advisory Commission on State Emergency Communications

Effective date: November 6, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 305-6911

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**TITLE 4. AGRICULTURE**

**Part I. Texas Department of Agriculture**

**Chapter 6. Seed Arbitration**

**4 TAC §§6.1-6.5**

The Texas Department of Agriculture (the department) adopts new §§6.1-6.5, concerning the administration of the arbitration of seed performance disputes, without changes to the proposed text as published in the August 29, 1997 issue of the *Texas Register* (22 TexReg 8583).

The new sections are adopted to establish procedures concerning the filing of complaints under Chapter 64 of the Texas Agriculture Code. The new sections provide definitions, filing requirements, costs related to arbitration and an expiration provision.

John T. Moss, General Manager, East Texas Seed Company, commented on the proposed regulations stating that he supported the proposed regulations. No other comments were received regarding the adoption of the proposal.

The new sections are adopted under the Texas Agriculture Code, §64.007, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of Chapter 64; and the Texas Agriculture Code, §64.006, which provides the Texas Department of Agriculture with the authority to charge filing fees and assess the costs of arbitration to any responsible party.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713692

Dolores Alvarado Hibbs

Deputy General Counsel

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**TITLE 10. COMMUNITY DEVELOPMENT**

**Part V. Texas Department of Economic Development**

**Chapter 182. Small Business Assistance**

**Subchapter B. Linked Deposit Program**

**10 TAC §§182.51, 182.52, 182.54-182.58, 182.60**

The Texas Department of Economic Development (department) adopts amendments to §§182.51, 182.52, 182.54-182.58 and 182.60, implementing the Linked Deposit Program authorized by Texas Government Code, Chapter 481, Subchapter N, without changes to the proposed text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7201), and will not be republished.

These amendments are being adopted to reflect legislative changes made by Senate Bill (SB) 265 and SB 932, to change references to the treasury to references to the comptroller in accordance with Senate Joint Resolution Number 1 of the 74th Legislature that proposed a constitutional amendment to abolish the State Treasury that was adopted by the voters, and to clarify aspects of the program that were unclear or confusing to more accurately reflect current program practices.

The amendments to §182.51, General Provisions, change the name of the implementing state agency to the Texas Department of Economic Development and the name of the program to the Linked Deposit Program due to statutory revisions enacted by the 75th Legislature. In addition, §182.51 is being amended to add child-care providers, non-profit corporations, and small businesses located in enterprise zones and to delete small businesses in distressed areas as eligible program participants in accordance with SB 265.

The amendments to §182.52, Definition of Terms, reflect the changes made by SB 265 and SB 932, and delete references to the state treasury and replace them with references to the comptroller in accordance with the abolishment of the State Treasury by the 74th Legislature.

The amendments to §182.54, Application Procedures for the Lender, change references to the treasury to references to the comptroller, and clarify the length of time the lender has to submit a compliance report to the department after a loan is funded.

There are two amendments to §182.55, Procedure for Review by the Department. The first change provides that applications found to be deficient will be considered withdrawn if the amended application is not received by the department within 15 calendar days of the date the lending institution is notified of the deficiency. This change is needed to eliminate the possibility that pending, incomplete applications will prevent other potential borrowers from obtaining funding. The second change is to reference the comptroller, rather than the treasury.

The amendments to §182.56, Acceptance and Rejection Procedures, change references to the treasury to references to the comptroller, clarify that execution of a written deposit agreement is required prior to funds being wired, provide that the interest rate paid on the linked deposit may be modified during the period of the loan, and provide that the department's governing board, as well as the executive director, may reconsider a rejected application.

The amendments to §182.57, Designation as a Distressed Community, clarify that municipalities may no longer apply to the department for designation as a distressed community under the program.

There are four amendments to §182.58, Program Limitations. Section 182.58(2) is being amended to add a maximum aggregate loan amount in order to encourage use of the program by multiple borrowers by eliminating the possibility that one borrower might utilize a large portion of the total funds available and to delete a provision that applied only until September 1, 1995. Section 182.58(4) is being amended to change the maximum amount of a loan to \$250,000, in accordance with SB 265. Section 182.58(7) is being amended to provide that loans do not expire upon expiration of the fiscal year, but are placed for the period of the loan subject to the lender remaining an approved lender by the comptroller, in accordance with SB 265. Section 182.58(10) is being added to provide that the comptroller is not required to maintain a deposit with a lending institution for a loan that has been extended, renewed, or renegotiated unless a new linked deposit application for the loan as modified has been submitted and approved.

The amendments to §182.60 change the name and update the address of the department.

No comments were received concerning the proposed amendments.

The rules are adopted under the authority of Texas Government Code, §481.005(d) and §481.0044(a), which require the department's governing board to adopt rules for programs administered by the department and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking, which sets forth the rulemaking procedure to be followed by state agencies in proposing and adopting rules.

Texas Government Code, Chapter 481, Subchapter N, is affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 13, 1997.

TRD-9713536

W. Lane Lanford

Chief Administrative Officer

Texas Department of Economic Development

Effective date: November 3, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 936-0181

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**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

## Chapter 12. Coal Mining Regulations

The Railroad Commission of Texas adopts the repeal of 16 TAC §§12.173, 12.340, 12.341, 12.342, 12.344, 12.347, 12.348, 12.349, 12.350, 12.355, 12.390, 12.395, 12.396, 12.510, 12.511, 12.512, 12.514, 12.517, 12.519, 12.522, 12.524, 12.555, 12.560, and 12.561, all relating to regulation of coal mining and reclamation; adopts new rules 16 TAC §§12.25, 12.26, 12.27, 12.28, 12.29, 12.30, 12.31, 12.32, 12.33, 12.173, 12.340, 12.341, 12.344, 12.347, 12.348, 12.349, 12.350, 12.355, 12.375, 12.390, 12.395, 12.510, 12.511, 12.514, 12.517, 12.519, 12.522, 12.524, 12.555 and 12.560, all relating to regulation of coal mining and reclamation; and adopts amendments to 16 TAC §§12.2, 12.3, 12.10, 12.13, 12.14, 12.15, 12.16, 12.72, 12.76, 12.83, 12.107, 12.116, 12.124, 12.125, 12.126, 12.127, 12.128, 12.129, 12.130, 12.131, 12.135, 12.136, 12.137, 12.139, 12.142, 12.145, 12.146, 12.148, 12.150, 12.170, 12.171, 12.172, 12.174, 12.175, 12.176, 12.177, 12.181, 12.182, 12.183, 12.185, 12.188, 12.190, 12.196, 12.197, 12.202, 12.210, 12.215, 12.216, 12.220, 12.221, 12.225, 12.227, 12.301, 12.327, 12.328, 12.331, 12.352, 12.357, 12.358, 12.360, 12.362, 12.363, 12.364, 12.366, 12.370, 12.376, 12.377, 12.378, 12.380, 12.385, 12.387, 12.388, 12.400, 12.401, 12.509, 12.526, 12.527, 12.528, 12.530, 12.531, 12.532, 12.533, 12.534, 12.535, 12.536, 12.537, 12.538, 12.539, 12.540, 12.541, 12.542, 12.543, 12.544, 12.545, 12.547, 12.552, 12.554, 12.569, 12.570, 12.651, 12.660, 12.661, 12.698, 12.702, 12.703, 12.704, and 12.706, all relating to regulation of coal mining and reclamation, without changes to the versions published in the August 8, 1997, *Texas Register* (22 TexReg 7279).

Sections 12.173, 12.340, 12.341, 12.344, 12.347, 12.348, 12.349, 12.350, 12.355, 12.390, 12.395, 12.510, 12.511, 12.512, 12.514, 12.517, 12.519, 12.522, 12.524, 12.555, and 12.560, all relating to coal mining and reclamation, are simultaneously repealed and replaced by new sections of the same section number. The following new sections address deficiencies in the state program identified by the Office of Surface Mining Reclamation and Enforcement (OSM) and are substantially identical to the corresponding federal regulation, shown in parentheses:

Section 12.173, relating to Geology Description (30 CFR 784.22);

Section 12.340, relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations (30 CFR 816.42);

Section 12.341, relating to Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams (30 CFR 816.43 and 816.44);

Section 12.344, relating to Hydrologic Balance: Siltation Structures (30 CFR 816.46);

Section 12.347, relating to Hydrologic Balance: Permanent and Temporary Impoundments (30 CFR 816.49);

Section 12.348, relating to Hydrologic Balance: Ground-Water Protection (30 CFR 816.50);

Section 12.349, relating to Hydrologic Balance: Protection of Ground Water Recharge Capacity (30 CFR 816.51);

Section 12.350, relating to Hydrologic Balance: Surface and Ground-Water Monitoring (30 CFR 816.52);

Section 12.355, relating to Hydrologic Balance: Stream Buffer Zones (30 CFR 816.57);

Section 12.390, relating to Revegetation: General Requirements (30 CFR 816.111);

Section 12.395, relating to Revegetation: Standards for Success (30 CFR 816.116 and 816.117). New §12.395 adds the postmining land use of "undeveloped land" to the list of land uses where ground cover and production of living plants must be at least equal to that of a reference area or such other success standard approved by the commission;

Section 12.510, relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations (30 CFR 817.42);

Section 12.511, relating to Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, Ephemeral Streams (30 CFR 817.43 and 817.44);

Section 12.514, relating to Hydrologic Balance: Sedimentation Ponds (30 CFR 817.46);

Section 12.517, relating to Hydrologic Balance: Permanent and Temporary Impoundments (30 CFR 817.49);

Section 12.519, relating to Hydrologic Balance: Surface and Ground-Water Monitoring (30 CFR 784.41);

Section 12.522, relating to Hydrologic Balance: Discharge of Water into an Underground Mine (30 CFR 784.41);

Section 12.524, relating to Hydrologic Balance: Stream Buffer Zones (30 CFR 817.57);

Section 12.555, relating to Revegetation: General Requirements (30 CFR 817.111); and

Section 12.560, relating to Revegetation: Standards for Success (30 CFR 817.116 and 817.117).

The following sections are repealed and the portions of those sections retained are amended and moved as described below:

Section 12.342, relating to Hydrologic Balance: Stream Channel Diversions, is repealed; the provisions that are retained have been amended and moved to new §12.341, relating to Hydrologic Balance: Diversions;

Section 12.396, relating to Revegetation: Tree and Shrub Stocking for Forest Land, is repealed; the provisions that are retained have been amended and moved to new §12.395, relating to Revegetation: Standards for Success;

Section 12.512, relating to Hydrologic Balance: Stream Channel Diversions, is repealed; the provisions that are retained have been amended and moved to proposed new §12.511, relating to Hydrologic Balance: Diversions; and

Section 12.561, relating to Revegetation: Tree and Shrub Stocking for Forest Land, is repealed; the provisions that are retained have been amended and moved to new §12.560, relating to Revegetation: Standards for Success.

New sections 12.25, 12.26, 12.27, 12.28, 12.29, 12.30, 12.31, 12.32, 12.33, and 12.375, all relating to coal mining and reclamation, are adopted herein. The following new sections address deficiencies in the state program identified by OSM and are substantially identical to the corresponding federal regulation, shown in parentheses:

Section 12.25, relating to Scope of Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.1);

Section 12.26, relating to Application Requirements and Procedures for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.11);

Section 12.27, relating to Contents of Application for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.12);

Section 12.28, relating to Public Availability of Information under Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.13);

Section 12.29, relating to Requirements for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.14);

Section 12.30, relating to Conditions of Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.15);

Section 12.31, relating to Stockpiling of Minerals relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.16);

Section 12.32, relating to Revocation and Enforcement pertaining to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.17);

Section 12.33, relating to Reporting Requirements for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.18), and

Section 12.375, relating to Permanent Program Performance Standards for Surface Mining Activities related to Disposal of Noncoal Wastes; §12.375 was inadvertently omitted from the rules adopted on March 17, 1997 (22 TexReg 3093, March 28, 1997).

The amendments to §§12.2, 12.3, 12.10, 12.13, 12.14, 12.15, 12.16, 12.72, 12.76, 12.83, 12.107, 12.116, 12.126, 12.127, 12.128, 12.129, 12.130, 12.142, 12.146, 12.148, 12.172, 12.174, 12.175, 12.176, 12.188, 12.190, 12.197, 12.202, 12.210, 12.215, 12.216, 12.220, 12.221, 12.225, 12.227, 12.301, 12.327, 12.328, 12.352, 12.357, 12.358, 12.360, 12.362, 12.376, 12.377, 12.378, 12.380, 12.385, 12.509, 12.526, 12.527, 12.528, 12.530, 12.535, 12.538, 12.543, 12.544, 12.545, 12.547, 12.552, 12.698, 12.702, 12.703, 12.704, and 12.706, relating to regulation of coal mining and reclamation, address deficiencies in the state program identified by OSM in review of the Texas Permanent State Program and which OSM deemed necessary to ensure the state program remains no less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and no less effective than the corresponding federal regulations. The following amendments to existing regulations contain language that is substantially identical to the corresponding federal regulations (listed in parentheses), as determined by the Director of OSM (see, 62 FedReg 14311, March 26, 1997):

Section 12.2, relating to Authority, Responsibility, and Applicability (30 CFR 700.11(a)(4), (a)(5), and (d));

Section 12.3, relating to definitions, including definitions for adjacent area, affected area, applicant, application, coal mining operation, coal processing waste, complete and accurate application, ground cover, other treatment facility, property to be

mined, replacement of water supply, sedimentation pond, siltation structure (30 CFR 701.5), definitions for cumulative measurement period, cumulative production, cumulative revenue, mining area, other minerals (30 CFR 702.5), and definition for violation, failure, or refusal (30 CFR 724.5);

Sections 12.10, 12.13, 12.14, 12.15, and 12.16, restrictions of financial interests of state employees (30 CFR 705.4, 705.5, 705.11, 705.13, 705.15, and 705.17);

Sections 12.72, 12.76, and 12.83, relating to procedures and requirements for designating lands unsuitable for surface coal mining operations (30 CFR 761.12 and 762.13);

Section 12.116, relating to Identification of Interests and Compliance Information for Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems (30 CFR 778.14(c));

Section 12.126, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Description of Hydrology and Geology (30 CFR 780.21);

Section 12.127, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Geology Description (30 CFR 780.22);

Section 12.128, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Ground-Water Information (30 CFR 780.21);

Section 12.129, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Surface-Water Information (30 CFR 780.21);

Section 12.130, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Alternative Water Supply Information (30 CFR 780.21);

Section 12.142, relating to Surface Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Maps and Plans pertaining to Operation Plans (30 CFR 780.14);

Section 12.146, relating to Surface Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Protection of Hydrologic Balance pertaining to Reclamation Plans (30 CFR 780.21);

Section 12.148, relating to Surface Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Ponds, Impoundments, Banks, Dams, and Embankments pertaining to Reclamation Plans (30 CFR 780.14);

Section 12.172, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Description of Hydrology and Geology (30 CFR 784.14);

Section 12.174, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Ground-Water Information (30 CFR 784.14);

Section 12.175, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Surface-Water Information (30 CFR 784.14);

Section 12.176, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Alternative Water Supply Information;

Section 12.188, relating to Underground Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Protection of Hydrologic Balance pertaining to Reclamation Plans (30 CFR 784.14);

Section 12.190, relating to Underground Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Ponds, Impoundments, Banks, Dams, and Embankments pertaining to Reclamation Plans (30 CFR 784.16);

Section 12.197, relating to Underground Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Maps and Plans pertaining to Operation Plans (30 CFR 784.23);

Section 12.202, relating to Surface Coal Mining and Reclamation Operations on Areas or Adjacent to Areas Including Alluvial Valley Floors in the Arid or Semi-Arid Areas west of the 100th Meridian (30 CFR 785.19);

Section 12.210, relating to Public Availability of Information under Exemption in Permit Applications on File with the Commission (30 CFR 773.13);

Section 12.215, relating to Review of Permit Applications for Permits for Special Categories of Mining (30 CFR 773.15(b)(1));

Section 12.216, relating to Criteria for Approval or Denial of Permits for Special Categories of Mining (30 CFR 773.15);

Section 12.220, relating to General and Right of Entry Conditions of Permits for Special Categories of Mining (30 CFR 773.17);

Section 12.225, relating to Commission Review of Outstanding Permits (30 CFR 773.21);

Section 12.301, relating to Requirements for Filing a Bond for Surface Coal Mining and Reclamation Operations (30 CFR 800.11);

Section 12.327, relating to Performance Standards for Coal Exploration (30 CFR 815.15);

Section 12.328, relating to Requirements for a Permit for Coal Exploration (30 CFR 772.14);

Section 12.352, relating to Permanent Program Performance Standards for Surface Mining Activities related to Water Rights and Replacement of Water (30 CFR 816.41(h));

Section 12.357, relating to Permanent Program Performance Standards for Surface Mining Activities related to General Requirements for the Use of Explosives (30 CFR 816.61);

Section 12.358, relating to Permanent Program Performance Standards for Surface Mining Activities related to Pre-Blasting Survey for the Use of Explosives (30 CFR 816.62);

Section 12.360, relating to Permanent Program Performance Standards for Surface Mining Activities related to Control of Adverse Affects for the Use of Explosives (30 CFR 816.61 and 816.67);

Section 12.362, relating to Permanent Program Performance Standards for Surface Mining Activities related to Records of Blasting Operations pertaining to the Use of Explosives (30 CFR 816.68);

Section 12.376, relating to Permanent Program Performance Standards for Surface Mining Activities related to General

Requirements for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 816.84);

Section 12.377, relating to Permanent Program Performance Standards for Surface Mining Activities related to Site Preparation for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 816.84);

Section 12.378, relating to Permanent Program Performance Standards for Surface Mining Activities related to Design and Construction Standards for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 816.84);

Section 12.380, relating to Permanent Program Performance Standards for Surface Mining Activities related to Protection of Fish, Wildlife, and Related Environmental Values (30 CFR 816.97(h));

Section 12.385, relating to Permanent Program Performance Standards for Surface Mining Activities related to General Requirements pertaining to Backfilling and Grading (30 CFR 816.83(c)(2));

Section 12.509, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements for pertaining to Hydrologic Balance (30 CFR 817.41);

Section 12.526, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements for the Use of Explosives (30 CFR 817.61);

Section 12.527, relating to Permanent Program Performance Standards for Underground Mining Activities related to Pre-Blasting Survey for the Use of Explosives (30 CFR 817.62);

Section 12.528, relating to Permanent Program Performance Standards for Underground Mining Activities related to Control of Adverse Affects pertaining to the Use of Explosives (30 CFR 817.61, 817.66, and 817.67);

Section 12.530, relating to Permanent Program Performance Standards for Underground Mining Activities related to Records of Blasting Operations pertaining to the Use of Explosives (30 CFR 817.68);

Section 12.535, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements pertaining to Coal Mine Waste Banks (30 CFR 817.81(c)(1));

Section 12.538, relating to Permanent Program Performance Standards for Underground Mining Activities related to Construction Requirements pertaining to Coal Mine Waste Banks;

Section 12.543, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 817.84);

Section 12.544, relating to Permanent Program Performance Standards for Underground Mining Activities related to Site Preparation for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 817.84);

Section 12.545, relating to Permanent Program Performance Standards for Underground Mining Activities related to Design and Construction Standards for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 817.84);

Section 12.547, relating to Permanent Program Performance Standards for Underground Mining Activities related to Protection of Fish, Wildlife, and Related Environmental Values (30 CFR 817.97(h));

Section 12.552, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Grading Requirements pertaining to Backfilling and Grading (30 CFR 817.83(c)(2));

Section 12.698, relating to Procedure for Assessment of Civil Individual Penalties (30 CFR 846.17(c));

Section 12.702, relating to General Requirements for the Training, Examination, and Certification of Blasters (30 CFR 850.13, 850.14, and 850.15);

Section 12.703, relating to Training Requirements for Blasters (30 CFR 850.13(b)(1)(iii));

Section 12.704, relating to Training Courses for Blasters (30 CFR 850.13); and

Section 12.706, relating to Examination of Blasters (30 CFR 850.14).

The amendment to §12.3, relating to Definitions, adds the term "administratively complete application" to distinguish between an application that contains all the information that is necessary to initiate processing and public review and an application that contains all the information that is necessary to make a decision on permit issuance which is denominated a "complete and accurate application" in the these regulations.

Amendments to §§12.107, 12.124, 12.125, 12.131, 12.135, 12.136, 12.137, 12.139, 12.145, 12.150, 12.170, 12.171, 12.177, 12.181, 12.182, 12.183, 12.185, 12.196, 12.221, 12.227, 12.331, 12.363, 12.364, 12.366, 12.370, 12.375, 12.387, 12.388, 12.400, 12.401, 12.531, 12.532, 12.533, 12.534, 12.536, 12.537, 12.539, 12.540, 12.541, 12.542, 12.554, 12.569, 12.570, 12.651, 12.660, and 12.661, make nonsubstantive changes to internal references and terminology.

No comments were received on the proposed repeals, amendments, and new sections.

## Subchapter A. General

### General

#### 16 TAC §12.2, §12.3

The amendments are adopted pursuant to §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713706

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Effective date: November 4, 1997

Proposal publication date: August 8, 1997

For further information, please call: (512) 463-7008

## Restriction of Financial Interests of State Employees

#### 16 TAC §§12.10, 12.13, 12.14, 12.15, 12.16

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713707

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Effective date: November 4, 1997

Proposal publication date: August 8, 1997

For further information, please call: (512) 463-7008

## Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

#### 16 TAC §§12.25-12.33

The new sections are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted new sections and amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713708

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Effective date: November 4, 1997

Proposal publication date: August 8, 1997

For further information, please call: (512) 463-7008

## Subchapter F. Lands Unsuitable for Mining Areas Designated by Act of Congress

#### 16 TAC §12.72

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.



This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008



## Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

### 16 TAC §12.76

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Process for Designating Areas as Unsuitable for Surface Coal Mining Operations

### 16 TAC §12.83

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter G. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System

### General Requirements for Permits and Permit Applications

#### 16 TAC §12.107

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Surface Mining Permit Applications-Minimum Requirements for Legal, Financial, Compliance, and Related Information

#### 16 TAC §12.116

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Surface Mining Permit Applications-Minimum Requirements for Information on Environmental

#### 16 TAC §§12.124-12.131, 12.135, 12.137

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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For further information, please call: (512) 463-7008



### Surface Mining Permit Applications-Minimum Requirements for Reclamation and Operation Plan

#### 16 TAC §§12.139, 12.142, 12.145, 12.146, 12.148, 12.150

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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### Underground Mining Permit Applications-Minimum Requirements for Information on Environmental Resources

#### 16 TAC §§12.170-12.177, 12.181-12.183

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### Subchapter G. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems

#### Underground Mining Permit Applications-Minimum Requirements for Information on Environmental Resources

##### 16 TAC §12.173

The repeals are adopted pursuant to §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

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For further information, please call: (512) 463-7008



### Underground Mining Permit Applications-Minimum Requirements for Reclamation and Operation Plan

#### 16 TAC §§12.185, 12.188, 12.190, 12.196, 12.197

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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For further information, please call: (512) 463-7008



### Requirements for Permits for Special Categories of Mining

## **16 TAC §12.202**

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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Railroad Commission of Texas

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## **Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions**

### **16 TAC §§12.210, 12.215, 12.216, 12.220, 12.221**

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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## **16 TAC §12.225, §12.227**

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **Subchapter J. Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations**

### **General Requirements for Insurance and Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs**

#### **16 TAC §12.301**

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **Subchapter K. Permanent Program Performance Standards-Coal Exploration**

### **Permanent Program Performance Standards-Coal Exploration**

#### **16 TAC §12.327, §12.328**

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

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For further information, please call: (512) 463-7008

◆ ◆ ◆  
Permanent Program Performance Standards-  
Surface Mining Activities

**16 TAC §§12.331, 12.340, 12.341, 12.344, 12.347–12.350, 12.352, 12.355, 12.357, 12.358, 12.360, 12.362–12.364, 12.366, 12.370, 12.375–12.378, 12.380, 12.385, 12.387, 12.388, 12.390, 12.395, 12.400, 12.401**

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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For further information, please call: (512) 463–7008

◆ ◆ ◆  
Subchapter K. Surface Coal Mining and Recla-  
mation Operations Permits and Coal Exploration  
Procedures Systems

Permanent Program Performance Standards-  
Surface Mining Activities

**16 TAC §§12.340, 12.341, 12.342, 12.344, 12.347, 12.348, 12.349, 12.350, 12.355, 12.390, 12.395, 12.396**

The repeals are adopted pursuant to §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

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For further information, please call: (512) 463–7008

◆ ◆ ◆  
Permanent Program Performance Standards-  
Underground Mining Activities

**16 TAC §§12.509–12.511, 12.514, 12.517, 12.519, 12.522, 12.524, 12.526–12.528, 12.530–12.545, 12.547, 12.552, 12.554, 12.555, 12.560, 12.569, 12.570**

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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For further information, please call: (512) 463–7008

◆ ◆ ◆  
Permanent Program Performance Standards-  
Underground Mining Activities

**16 TAC §§12.510, 12.511, 12.512, 12.514, 12.519, 12.524, 12.555, 12.560, 12.561**

The repeals are adopted pursuant to §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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Railroad Commission of Texas

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For further information, please call: (512) 463–7008

◆ ◆ ◆  
Special Permanent Program Performance  
Standards-Coal Processing Plants and Support Fa-  
cilities not located at or near the Minesite or not  
within the Permit Area for a Mine

**16 TAC §12.651**

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

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For further information, please call: (512) 463-7008

## Special Permanent Program Performance Standards-In Situ Processing

### 16 TAC §12.660, §12.661

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008

## Subchapter L. Permanent Program Inspection and Enforcement Procedures

### 16 TAC §12.698

The amendment is adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008

## Subchapter M. Training

### Training, Examination, and Certification of Blasters

#### 16 TAC §§12.702-12.704, 12.706

The amendments are adopted under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008

## TITLE 22. EXAMINING BOARDS

### Part IV. Texas Cosmetology Commission

#### Chapter 83. Sanitary Rulings

##### 22 TAC §83.22

The Texas Cosmetology Commission adopts an amendment to §83.22, concerning infectious diseases without changes to the proposed text as published in the June 27, 1997, issue of the Texas Register (22 TexReg 6089).

The amendment is adopted as a result of the legislative session, and the passage of SB1131.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Section 32, Article 8451a, V.T.C.S., which provides the commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and safety.

Article 8451a, V.T.C.S., is affected by this adopted section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9713701

Delores Alsbaugh

Interim Executive Director

Texas Cosmetology Commission

Effective date: November 4, 1997

Proposal publication date: June 27, 1997

For further information, please call: (512) 454-4674

## Part XXI. Texas State Board of Examiners of Psychologists

### Chapter 461. General Rulings

#### 22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.7, concerning License Statuses, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8522).

The rule is being amended to reflect that an individual may keep a license on active if that individual holds another license with this Board or another jurisdiction and to reflect that a license may not be placed on inactive status without express permission from the Board if that individual has a complaint pending, which will ensure the licensee's compliance with any regulatory disciplinary actions taken.

The amendment will ensure that licensees comply with continuing education requirements and that licensees will comply fully with disciplinary actions imposed by the Board.

Comments were received by a licensee of the Board regarding adoption of the amendment.

Comment: The licensee was in favor of the amendment as published.

Response: The Board agrees that the rule now offers even more protection to the public.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713869

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



#### 22 TAC §461.11

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.11, concerning Continuing Education, with changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8522).

The rule is being amended to reflect the elimination of two separate categories of continuing education, to specify how continuing education hours may be obtained, and to clarify the number of hours a licensee receives for participating in various continuing education activities.

The amendment will ensure that each individual licensed by the Board is obtaining relevant continuing education hours yearly, thereby allowing the citizens of Texas to obtain the best possible psychological services available by qualified individuals and to

make the rules easier for licensees and the general public to understand and follow.

Comments were received from a licensee of the Board regarding adoption of the amendment.

Comment: The licensee felt that the rule was overly restrictive and should be altered to allow a licensee to count the same course work no more than once every two years.

Response: The Board's response is that, given the Board's resources and the elimination of banking, the change better ensures that licensees constantly increase their knowledge about the practice of psychology.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

#### §461.11. Continuing Education.

(a) Requirements. All licensees of the Board are obligated to continue their professional education by completing 12 hours of continuing education during each year that they hold a license from the Board regardless of the number of separate licenses held by the licensee.

(1) Continuing education hours may be obtained by participating in one or more of the following activities. The same workshop or course may not be used for credit more than once.

- (A) graduate level studies in psychology;
- (B) formal continuing education activities;
- (C) workshop presentations; and/or
- (D) publications.

(2) Continuing education hours may be obtained from:

- (A) regionally accredited institutions of higher education;
- (B) national, regional, state, or local Psychological Associations; or
- (C) other Board recognized providers of continuing education.

(3) Continuing education hours must be directly related to the practice of psychology. The Board shall make the determination as to whether the activities claimed by the licensee are directly related to the practice of psychology. It is the responsibility of the licensee to choose activities which provide demonstrated relevance to the practice of psychology. The Board will not consider personal psychotherapy, workshops for personal growth, or services to professional associations as meeting the requirements for continuing education.

(b) Banking. Continuing education hours received after December 31, 1997, cannot be banked. Continuing education hours accrued prior to December 31, 1997, received from formal continuing education programs in excess of four hours during any one-year period may be banked for no longer than an additional two years provided that eight hours of additional continuing education hours are also completed each year by the licensee.

(c) Documentation. Any submitted continuing education credits must have been received no earlier than 12 months prior to the renewal period for which they are submitted. The Board will accept as documentation of continuing education:

(1) for hours received from attending college or university courses, grade slips or transcripts must be submitted. Each semester credit hour will count as four hours of continuing education.

(2) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course must be submitted. The same course may not be used for credit more than once. Each semester credit hour will count as four hours of continuing education.

(3) for hours received from continuing education workshops or programs, certificates of attendance or completion specifying the actual number of pre-assigned continuing education hours will be required for attendees.

(4) for presenters of continuing education workshops, copies of the program announcement and content will be required. Presenters may submit for credit only six hours per year in this category. The same workshop or topic may be submitted only once per year in this category.

(5) for authors of publications (articles, chapters, or books), the article or table of contents may be submitted as proof of publication. Articles or chapters in relevant professional journals, periodicals, or books may be credited four hours towards the continuing education requirements per year. The title page and table of contents may be submitted for published books and edited books. Published books authored or co-authored may be credited eight hours. Editing of a relevant professional book may be credited six hours.

(d) Declaration Form. Licensees must sign and submit a completed Continuing Education Declaration Form with the annual renewal form specifying the continuing education they received for that period. This does not alter the responsibility of licensees to reply truthfully to any question concerning continuing education on the renewal form itself.

(e) - (f) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

## 22 TAC §461.12

The Texas State Board of Examiners of Psychologists adopts new §461.12, concerning Former Board Members, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8524).

The rule is being adopted to clarify the roles of former Board members whose terms have expired.

The new rule will avoid potential confusion of public consumers of psychological services and prevent potential conflicts of interest concerning former Board members.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9713871

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

## Chapter 463. Applications

### 22 TAC §463.3

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.3, concerning Date of Degree, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8524).

The rule is being amended to simplify the rule making it easier to determine the date for completion of the requirements of a degree.

The amendment will make the rule easier to follow for the applicant and for the general public.

Comments were received by a licensee of the Board regarding adoption of the amendment.

Comment: The licensee felt that the Board did not have legal authority to make this amendment.

Response: The Board feels that the licensee misunderstood the purpose and effect of the rule. The rule states that the date a degree is received will be the date stated on the transcript. The licensee apparently believed the date the degree was conferred would be the date that the course work required for the degree was actually completed.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9713872

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

### 22 TAC §463.4

The Texas State Board of Examiners of Psychologists adopts new §463.4, concerning Applicants with Disabilities, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8525).

The rule is being adopted to bring the rules of the Board into line with the requirements of the Americans With Disabilities Act.

The new rule will ensure compliance by all licensees with the Americans With Disabilities Act.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9713873

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## 22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.5, concerning Application File Requirements, without changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8839).

The rule is being amended to clarify that any applicant for licensure as a specialist in school psychology must have attained a graduate degree that meets the requirements of the Psychologists' Licensing Act, §26.

The amendment will make the rules easier to follow and to ensure that all licensees and the general public are aware of the Board's requirements for licensure as a specialist in school psychology.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## 22 TAC §463.6

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.6, concerning Experience, with changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8525).

The rule is being amended to clarify and simplify the rule regarding the experience requirements for licensure as a psychologist.

The amended rule will enable licensees and consumers of psychological services to better understand and track the training requirements for licensed psychologists.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

*§463.6. Supervised Experience Required for Licensure as a Psychologist.*

In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been a formal internship which meets the requirements set forth in paragraphs (2) or (3) of this section. The formal internship year may be met either before or after the doctoral degree is conferred.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than twelve consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive in accordance with established Board policy, upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.



(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules in effect during the supervision experience regardless of setting.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(2) At least one year of experience must be satisfied by one of the following:

(A) The successful completion of an internship program accredited by the American Psychological Association; or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of (20) hours a week.

(iii) The internship agency must have two or more full-time equivalent licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship level psychology trainees must have titles such as "intern," "resident," "fellow," or other designation of trainee status.

(xi) The internship agency must have a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quantity and quality of trainee's work and must be made available to prospective interns.

(xii) Consortia may be created if they follow the guidelines of the current American Psychological Association Committee on Accreditation Handbook; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a licensed psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than 12 interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship must be documented by a written contractual agreement specifying the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(xiv) Consortia may be created to meet the criteria in this section.

(3) Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this section. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which s/he does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713875

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## 22 TAC §463.32

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.32, concerning Licensed Specialist in School Psychology, with changes to the proposed text published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8528).

The rule is being amended to clarify the requirements for the Licensed Specialist in School Psychology. The amended rule will ensure that the licensees and the public are aware of the requirements regarding the practice of psychology in the public school districts and to ensure that the children in the public school districts of Texas receive psychological services from the most qualified individuals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

*§463.32. Licensed Specialist in School Psychology, Requirements for Licensure.*

(a) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid National Certified School Psychologist (NCSP) certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the

American Psychological Association will be considered to have met the training qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, and have completed at least 60 graduate level semester credit hours, also from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

(1) Psychological Foundations, including:

- (A) biological bases of behavior;
- (B) human learning;
- (C) social bases of behavior;
- (D) multi-cultural bases of behavior;
- (E) child or adolescent development;
- (F) psychopathology or exceptionalities.

(2) Research and Statistics;

(3) Educational Foundations, including:

- (A) instructional design;
- (B) organization and operation of schools;

(4) Assessment, including:

- (A) psychoeducational assessment;
- (B) socio-emotional, including behavioral and cultural, assessment;

(5) Interventions, including:

- (A) counseling;
- (B) behavior management;
- (C) consultation;

(6) Professional, Legal and Ethical Issues;

(7) A Practicum; and

(8) An internship or experience.

(b) Completion of internship or experience. Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. The internship or experience in the public school must be supervised by an individual qualified in accordance with §465.38 of this title (relating to Psychological Services in the Schools). Internship or experience which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered for specialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and may be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of

assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(c) **Examinations.** Candidates for licensure as a specialist in school psychology must take and pass the Board's Jurisprudence Examination. Candidates must also take the National School Psychology Examination administered by the Educational Testing Service and obtain at least the current cut-off score for the NCSP.

(d) **Additional Requirements.** In addition to the requirements of subsections (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under the Psychologists' Certification and Licensing Act, §11(d).

(e) **Temporary Licenses.** Individuals from another jurisdiction who meet the requirements as set forth in the Psychologists' Certification and Licensing Act, §15A may apply to the Board for a temporary license to offer psychological services in the public schools if they meet all the requirements for temporary licensure as a licensed specialist in school psychology as set forth in §463.5 of this title (relating to Application File Requirements). This license is valid for a period not to exceed one academic year.

(f) **Grandparenting Provision for the Licensed Specialist in School Psychology.**

(1) **Grandparenting Time Period.** A person who, on or after September 1, 1992, but before September 1, 1996, was providing psychological services in a public school of this state and is also credentialed by this Board, or the National School Psychologists' Certification Board, or the Texas Education Agency as a school psychologist or associate school psychologist is entitled to a license as a licensed specialist in school psychology under the Psychologists' Certification and Licensing Act, §26, without examination, if the person applies to the Board for the license before September 1, 1997. An individual who qualifies for grandparenting may continue to practice under his/her present certification or license until s/he obtains the specialist in school psychology license, provided that the individual has filed a completed application for grandparenting prior to September 1, 1997, with the Board, or until the application is voided or denied.

(2) **Application Requirements.** A completed application for grandparenting licensure as a specialist in school psychology includes:

- (A) an application and required fee;
- (B) two current passport pictures of the applicant;
- (C) verification sent directly to the Board from the school district superintendent or his/her administrative designee that the applicant provided psychological services in the district during the period set forth in paragraph (1) of this subsection.

(D) verification sent directly to this Board from the credentialing agency of the applicant's certification/licensure as set forth in paragraph (1) of this subsection. Any individuals who hold either a temporary, intermediate or one-year certificate issued by the Texas Education Agency must produce proof that their deficiency plans have been completed by September 1, 1997, to qualify for a license under this paragraph.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## Chapter 465. Rules of Practice

### 22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.38, concerning Psychological Services in the Schools, without changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8839).

The rule is being amended to clearly state who may use the title of Licensed Specialist in School Psychology and to clarify the qualifications of a supervisor.

The amended rule will ensure that the licensees of the Board and the public are aware of the requirements regarding the practice of psychology in the public school districts of Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## Chapter 466. Procedure

### 22 TAC §466.2

The Texas State Board of Examiners of Psychologists adopts an amendment to §466.2, concerning Definitions, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8529).

The rule is being amended to add the definition of legal representative as it pertains to informal settlement conferences held before the Board.

The amendment will ensure that licensees have adequate representation in all matters before the Board pertaining to Chapter 2001 of the Texas Government Code and to ensure that the Agency does not unknowingly enable an individual to engage in the unauthorized practice of law.

Comments were received by a licensee of the Board regarding adoption of the amendment.

Comment: The licensee objects that it is common for individuals to have non-lawyer representation in settlement proceedings, that there is no indication that representing a licensee in an informal settlement proceeding is the unauthorized practice of law and that the Board "has failed to even ask the Texas Bar or the Unauthorized Practice of Law Committee of the Texas Supreme Court for their views before going forward with this amendment."

Response: The Board's response is that an individual who engages in the practice of law in the State of Texas must be licensed by the State Bar. The representation of a licensee in an informal settlement conference involves advising the licensee as to his or her legal rights and whether to waive them by entering into an agreed order. The rule ensures that the Board does not unknowingly facilitate the illegal practice of law without a license. Furthermore, the Board consulted with the Texas Supreme Court Unauthorized Practice of Law Committee and the State Bar and were advised that the best way to ensure compliance was to promulgate a rule requiring all representatives to have a license to practice law in the state.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## **22 TAC §466.15**

The Texas State Board of Examiners of Psychologists adopts an amendment to §466.15, concerning Informal Disposition, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8530).

The rule is being amended to simplify and clarify the wording of the rule, making it easier to follow.

The amendment will better inform the public and licensees of the requirements of the Board, thereby ensuring that the public receive psychological services from the most qualified individuals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## **Chapter 469. Specialty Certification**

### **22 TAC §469.2**

The Texas State Board of Examiners of Psychologists adopts an amendment to §469.2, concerning Criteria for Health Service Providers in Psychology, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8531).

The rule is being amended to recodify supervised experience requirements concerning the Health Service Provider.

The amendment will make the rule easier for the public and licensees to be able to track the requirements of the rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



## **Chapter 473. Fees.**

### **22 TAC §473.4**

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.4, concerning Late Fees for Renewals, without changes to the proposed text as published in the August 26, 1997, issue of the *Texas Register* (22 TexReg 8531).

This rule is being amended in order to add the late fee requirements for the Licensed Specialist in School Psychology.

The amendment will make the public and licensees aware of the required fees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

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## Part XXIII. Texas Real Estate Commission

### Chapter 535. Provisions of the Real Estate License Act

#### Licensed Real Estate Inspectors

##### 22 TAC §535.222

The Texas Real Estate Commission (TREC) adopts an amendment to §535.222, concerning standards of practice for licensed inspectors, without changes to the proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7462). The amendment deletes language permitting inspectors to use inspection reports of their own design or those report forms required by a client. The amendment is adopted in connection with the commission's adoption of a series of standard inspection report forms which inspectors will be required to use unless federal law requires use of a different form in the transaction. Inspectors licensed by the commission may provide a client with additional information as attachments to any standard report form adopted by the commission.

Several inspectors urged the commission to continue to allow the inspector's client to choose the form of the report which the inspector would use, arguing that the client has the right to determine the form of the report for which the client is paying. The commission determined that the provisions of Senate Bill 1100, 75th Legislature (1997) requiring the commission to adopt standard report forms and rules requiring their use precluded the use of different forms by inspectors.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 10, 1997.

TRD-9713537

Mark A. Moseley

General Counsel

Texas Real Estate Commission

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Proposal publication date: August 12, 1997

For further information, please call: (512) 465-3900

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##### 22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts new §535.223, concerning standard inspection report forms, with changes to the proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7462). The new section adopts by reference a series of inspection report forms and requires inspectors licensed by the commission to use those forms when performing inspections of residential properties, unless federal law requires use of a different report form. Adoption of the section is necessary for TREC to comply with Senate Bill 1100, 75th Legislature (1997), which requires the commission to adopt rules requiring its inspector licensees to use standard inspection report forms.

The section permits licensed inspectors to reproduce the forms from printed copies obtained from the commission or by computer. When reproducing the form, however, the licensee will not be permitted to alter the appearance of the form, other than to delete items which are not being inspected. If an item is deleted, the heading of the item must remain in the report with a notation explaining why the item was not inspected. The section also permits the inspector to add additional pages if necessary to report on systems not contained in the forms or space provided in the forms is inadequate for a full reporting. Failure to comply with the section will be grounds to suspend or revoke the license of the inspector or to impose an administrative penalty.

TREC received 24 written comments on the proposed inspection report forms and the provisions of the section relating to their use. The Texas Association of Real Estate Inspectors (TAREI) opposed adoption of the proposed forms as being cumbersome and inefficient, but noted that TREC was required by law to adopt standard report forms. TAREI suggested a number of modifications to the report forms to make them more closely comply with TREC's inspection standards. In response to TAREI suggestions, Property Inspection Report REI 7-0 was modified to add provisions for reporting plumbing leaks in the foundation, the condition of the roof covering, water leaks in the dishwasher, gas line material identification, presence or absence of appropriate electrical connections, oven elements and burners, ground fault circuit interrupters for whirlpool baths, power source for evaporative coolers, flame condition for the heating system, and functional drainage for the plumbing section. TAREI also commented that the 4-way valve and defrost cycle for heat pumps was not required by TREC inspection standards. The commission agreed and deleted that provision from the form. The commission did not concur with the following suggested changes to report form text because either the changes had already been made or were unnecessary for preprinted text to comply with the inspection standards: foundation performance, attic firestopping, dishwasher soap dispenser and elements, microwave oven light, fuel oil or solar energy sources for water heaters, water heater safety pan, consistent reporting of operation of power vents and garage doors, use of the term "panelboard", exposed wiring and conduit, type of gas line, prox-

imity of septic systems to wells, underground cisterns and other items, limits of septic tank, anaerobic septic system equipment, swimming pool equipment and enclosure information, foundation and driveway cracks, wall and ceiling cracks, freshly painted surfaces, detachable or key-locked burglar bars, detailed furnace information, and number of ground fault circuit interrupter devices required. The section permits inspectors to make such comments as are appropriate in the space provided on the report forms, and the inspector may attach additional pages to include any items which are not listed in the text of the report forms.

With regard to the format of the form, TAREI and other commenters suggested that the items being inspected should be numbered for reference in the inspector's comments, that the size of the font should be increased and that language should be added to the first page of the report to show that the inspector could provide additional information as an addendum. TREC concurred and made the changes. Due to the increase in length of the report such changes would involve, TREC did not agree to place headers and footers on each page and a separate column of check boxes on each page to show when items were not found or were inaccessible.

A number of comments received on the proposed section related to the format and content of the proposed forms and to the proposed requirement that the forms be reproduced without changes. The commission agreed in part with the comments and modified the section to permit the inspector to delete items which were not being inspected, although the inspector would be required to include the heading for the deleted item and make an appropriate notation, such as the item not being found in the property. The commission determined that further changes to the text of the reports would cause the forms to vary widely in appearance and thus not be standard forms. Commenters urged the commission to provide additional space for comments by deleting lines printed in the comment sections and moving the text closer to the left margin of the documents. The commission concurred with these comments and made the requested changes. Comments were also received suggesting that the forms were too lengthy and that too much space was provided for comments. The commission determined that the space provided was appropriate to ensure an adequate reporting of the condition of the property being inspected and did not reduce the length of the reports.

In response to oral comments at the TREC meeting at which the section was adopted, TREC modified the report form to include five bathroom groups and heating/cooling systems and two water heaters. Upon a staff suggestion, the first page of Property Inspection Report REI 7-0 was also modified to reflect an amendment to the provisions of 22 TAC §535.222 regarding use of other forms.

The Texas Real Estate Inspector Committee (TREIC), which developed the proposed report forms, suggested that adoption of standard report forms was unnecessary because the TREC inspection standards required the inspector's report to follow a specific arrangement and was thus a form of standard report. The commission determined that Senate Bill 1100 required a more uniform appearance in the inspection reports used by its licensees and did not concur with TREIC's suggestion.

The new section is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commis-

sion to make and enforce all rules and regulations necessary for the performance of its duties.

*§535.223. Standard Inspection Reports.*

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 1997 and published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

- (1) Property Inspection Report, REI No. 7-0;
- (2) Optional Systems Property Inspection Report (Gas Lines), REI No. 8-0;
- (3) Optional Systems Property Inspection Report (Out-buildings), REI No. 9-0;
- (4) Optional Systems Property Inspection Report (Outdoor Cooking Equipment), REI No. 10-0;
- (5) Optional Systems Property Inspection Report (Lawn and Garden Sprinkler System), REI No. 11-0;
- (6) Optional Systems Property Inspection Report (Private Water Wells), REI No. 12-0;
- (7) Optional Systems Property Inspection Report (Individual Private Sewage Systems), REI No. 13-0;
- (8) Optional Systems Property Inspection Report (Built-in Security and Fire Protection Equipment), REI No. 14-0; and
- (9) Optional Systems Property Inspection Report (Swimming Pools and Equipment), REI No. 15-0.

(b) Except when federal law requires a different report, each inspector licensed by the commission shall complete all applicable portions of Property Inspection Report REI No. 7-0 and, if an optional system is to be included, the appropriate Optional Systems Property Inspection Report, REI Nos. 8-0 through 15-0 ("the forms") and provide a copy of the forms to any person for whom the inspector has performed an inspection of residential property.

(c) Inspectors may reproduce the forms from printed copies obtained from the commission and may reproduce the forms by computer. With the exception of the changes to the forms which are permitted by this section, the inspector shall reproduce the forms verbatim and the spacing, length of blanks, borders, fonts and placement of text on the page must appear to be identical to that used by the commission in the printed version of the forms. Inspectors may insert information in the spaces provided for that purpose.

(d) When using either a printed version of the forms or a version reproduced by computer, the licensee shall comply with §535.222 of this title (Relating to Standards of Practice). If a part, component, or system contained in the forms is not present in the property or has not been inspected under the departure provisions of §535.222, the inspector shall make an appropriate notation on the forms, clearly indicating the reason the part, component or system has not been inspected. The inspector may delete the subparts of the report form relating to the item which is not being inspected. The heading for the deleted item must appear in the report. The inspector may also renumber the pages of the form to correspond with any deletions of text under this subsection. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the forms is inadequate for a complete reporting of the inspection, such as when the inspector provides a higher level of inspection performance than that required by §535.222, the inspector may attach additional pages to the forms.

(e) Failure to comply with this section is grounds for the suspension or revocation of an inspector's license or the imposition of an administrative penalty by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark A. Moseley

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 465-3910



## Part XXIV. Texas Board of Veterinary Medical Examiners

### Chapter 571. Licensing.

#### Examination

##### 22 TAC §571.18

The Texas Board of Veterinary Medical Examiners adopts amendments 22 TAC 571.18, concerning Provisional Licensure without changes to the proposed text published in the August 1, 1997 issue of the *Texas Register* 22 TexReg 7121.

The agency is adopting these amendments to clarify when the Board may issue a provisional license, sponsorship requirements and cancellation.

The amendments are necessary to ensure that provisional licenses are issued only to qualified applicants and that provisional licensees who have not provided evidence of their competency through testing are directly supervised by the sponsoring veterinarian.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The amendments affect the Veterinary Licensing Act, Article 8890, § 10(b) which authorizes the Board to grant provisional licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ron Allen

Executive Director

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7555



## Chapter 573. Rules of Professional Conduct

### Supervision of Personnel

#### 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners adopts amendments 22 TAC 573.10, concerning Supervision of Non-Licensed Personnel (with/without) changes to the proposed text published in the August 1, 1997 issue of the *Texas Register* 22 TexReg 7122.

The agency is adopting these amendments to clarify the responsibility of a veterinarian providing general, direct or immediate supervision of a non-licensuree.

The amendments are necessary to specifically define the licensee's responsibility for the actions of non-licensed employees and to ensure consistency with Rule 573.51, Rabies Control, which allows a non-licensuree to authenticate Rabies vaccinations under certain circumstances.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The amendments affect the Veterinary Licensing Act, Article 8890, § 14(a)(7) which prohibits fraudulent issuance of vaccination certificates relating to the presence or absence of an animal disease by a licensed veterinarian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Records Keeping

#### 22 TAC §573.51

The Texas Board of Veterinary Medical Examiners adopts amendments 22 TAC 573.51, concerning Rabies Control without changes to the proposed text published in the August 1, 1997 issue of the *Texas Register* 22 TexReg 7123.

The agency is adopting these amendments to clarify the requirement that direct supervision by a veterinarian is required when a signature stamp is utilized to authenticate a rabies certificate. Additional amendments clarify when it is permissible for non-licensurees to administer rabies vaccinations. Additional amendments are made to refer to applicable Texas Department of Health Rules.

The amendments are necessary to fully articulate the requirement that direct supervision by a veterinarian is required when a signature stamp is used to authenticate a rabies certificate.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The amendments affect the Veterinary Licensing Act, Article 8890, § 14(a)(7) which prohibits fraudulent issuance of vaccination certificates relating to the presence or absence of an animal disease by a licensed veterinarian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Other Provisions

### 22 TAC §573.60

The Texas Board of Veterinary Medical Examiners adopts amendments 22 TAC 573.60, concerning Practice Prohibitions with changes to the proposed text published in the August 1, 1997 issue of the *Texas Register* 22 TexReg 7124.

The agency is adopting these amendments to specify that a licensee will be subject to sanctions for providing care and treatment to humans, including dispensing prescription medications for personal use.

The amendments are necessary to clarify that a licensed veterinarian will be subject to sanctions if he/she provides care and/or treatment to humans, including dispensing prescription medications for personal use. The rule does not prohibit the administration of first aid or emergency care to humans in an emergency or disaster situations.

One comment pointed out that the phrase "dispensing medication for personal use by a human" would include giving an individual an aspirin. In order to define what medications are involved, the word prescription was added to the first sentence.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The amendments affect the Veterinary Licensing Act, Article 8890, § 14(a)(3) which prohibits illegal acts by veterinarians connected to their practice of veterinary medicine.

§573.60 *Prohibition Against Treatment Of Humans.*

A veterinarian shall not provide care and treatment of humans including dispensing prescription medication for personal use by a human. A licensee may render first aid or emergency care to a human if such action is without expectation of compensation in response to an emergency or disaster situation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 575. Practice and Procedure

### 22 TAC §575.20

The Texas Board of Veterinary Medical Examiners adopts amendments 22 TA 575.20, concerning Subpoena Fees and Expenses of Witnesses without changes to the proposed text published in the August 1, 1997 issue of the *Texas Register* 22 TexReg 7125.

The agency is adopting these amendments to make the Board's rule consistent with text appearing in the Administrative Procedure Act.

The amendments are necessary to conform the Board rule to the statute. which authorizes direct payment of transportation and lodging expenses to the provider.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The amendments affect the Veterinary Licensing Act, Article 8890, § 15 authorizing the Board to hold administrative hearings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 22 TAC §575.28



The Texas Board of Veterinary Medical Examiners adopts a new rule 22 TAC 575.28, concerning Appearances; Continuances without changes to the proposed text published in the July 22, 1997 issue of the *Texas Register* 22 TexReg 6815.

The agency is adopting this new rule which allows an Administrative Law Judge to grant a continuance at the request of the Board if a party has failed to respond.

The new rule is necessary to define who may make an appearance, the time period for making an appearance and the method of making an appearance. The new rule will ensure timely response by parties to administrative actions.

No comments were received regarding adoption of this new rule.

The new rule is adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The new rule affects the Veterinary Licensing Act, Article 8890, § 15 authorizing the Board to hold administrative hearings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 577. General Administration and Duties

### Staff and Miscellaneous

#### 22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts amendments to rule 22 TAC 577.15, concerning the Fee Schedule without changes to the proposed text published in the August 1, 1997 issue of the *Texas Register* 22 TexReg 7125 and 7158.

The agency is amending the fee schedule to increase the fees for license renewal by \$4. An additional amendment creates a new fee for checks that are returned for insufficient funds.

The amendment to this rule is necessary to provide adequate revenue to cover the legislative appropriations made to the Board for fiscal year 1998.

No comments were received regarding adoption of these amendments.

The new rule is adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The new rule affects the Veterinary Licensing Act, Article 8890, § 19 which requires that reasonable and necessary fees be established through rules, that will produce sufficient revenue to cover the cost of administering the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ron Allen

Executive Director

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#### 22 TAC §577.29

The Texas Board of Veterinary Medical Examiners adopts a new rule 22 TAC 575.29, concerning Failure to Attend Hearings; Default Judgement without changes to the proposed text published in the July 22, 1997 issue of the *Texas Register* 22 TexReg 6816.

The agency is adopting this new rule that allows final action to be taken against a licensee if he/she has received notice of a hearing and fails to participate.

The new rule is necessary to permit the entry of a default judgement and findings that allegations are admitted as true such that a final disposition may be made in the administrative hearing in which a licensee has chosen not to participate.

No comments were received regarding adoption of this new rule.

The new rule is adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, § 7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The new rule affects the Veterinary Licensing Act, Article 8890, § 15 authorizing the Board to hold administrative hearings relating to disciplinary actions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

## Chapter 5. Property and Casualty Insurance

### Subchapter R. Temporary Rate Reduction for Certain Lines of Insurance

#### **28 TAC §§5.14002-5.14005, 5.14007 and 5.14011**

The Commissioner of Insurance of the Texas Department of Insurance adopts amendments to §§5.14002-5.14005, 5.14007 and 5.14011, concerning temporary rate reductions for certain lines of insurance, with changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8848).

The amendments are necessary to update Subchapter R (Temporary Rate Reduction for Certain Lines of Insurance) to apply to 1998 rates. The 73rd and 74th Texas Legislatures passed several bills intended to reform the civil justice system of this state and to result in reductions in the cost of litigation and the size of judgments. This effort is commonly referred to as "tort reform." To ensure that savings from tort reforms were passed on prospectively to Texas policyholders, the legislature enacted what is now codified as article 5.131, Texas Insurance Code. This article requires the commissioner of insurance to hold a hearing on or before September 1 of each year and issue rules specifying the percentage of equitable across-the-board reductions in insurance rates required of insurers. Subchapter R was enacted to implement article 5.131 of the Texas Insurance Code.

In 1995, §§5.14000 - 5.14010 were adopted establishing the procedures and percentages for the first rate reduction which affected policies issued on or after January 1, 1996. In 1996, §5.14011 was added, continuing these rate reduction percentages for policies issued on or after January 1, 1997.

Sections 5.14000 - 5.14011 concern the temporary rate reductions for the lines of insurance specified in article 5.131. Insurers are required to pass through to policyholders, on a prospective basis, the reduction in loss and allocated loss adjustment expense anticipated from recent tort reform legislation as set forth in the sections. The sections set forth the calculation and application of the amount of the rate reduction for certain lines of insurance. The percentages of reduction by line set out in the adopted amendment affect policies issued on or after January 20, 1998.

Hearings regarding the proposed rate reduction percentages and the amendments to the sections were held on August 26, 1997, and October 14, 1997. Oral testimony and written comments and evidence submitted at both hearings were considered as part of the record pertaining to these amendments to §§5.14002 - 5.14005, 5.14007 and 5.14011.

The reduction percentages set out in the adopted amendments to §5.14004 were based on two sources of data. One source of data was a focus group study conducted by the University of Texas LBJ School of Public Affairs, hereinafter referred to as the LBJ School Study or the study. This study was intended to provide information on behavioral changes resulting from tort reform. The LBJ School Study included focus group sessions and interviews conducted with plaintiffs' and defendants' attorneys, claims adjusters, mediators and judges in Dallas County, the Rio Grande Valley, Lubbock County, Jefferson County and Harris County. Participants in the study provided input regarding how the tort reforms have affected

behavior in the insurance industry, the bar and court houses across the state.

The other source of data were four closed claim reports: (1) commercial lines bodily injury, (2) supplemental commercial lines bodily injury, (3) commercial lines non-bodily injury, and (4) personal lines. The first data report is the liability insurance closed claim report mandated by article 1.24B of the Texas Insurance Code. The data from the other closed claim reports was gathered by the department in special data calls in May 1997. This data indicated that an increase in the reduction percentages from those currently in place was justified and appropriate.

The closed claim reports do not yet fully reflect the effects of tort reform. Liability coverages, which are the coverages affected by tort reform tend to take longer to resolve. Therefore, the full effects of tort reform are not yet reflected in the closed claims reports. It may be some time until the full effects of tort reform can be reliably estimated from actual claims experience data. Moreover, certain likely effects of tort reform cannot be measured directly from the closed claim data. Limitations in the data may mean that some effects are not fully measured. It is therefore necessary to rely on other relevant supplemental information to determine the effect. This includes the opinions and observations of individuals closely involved in the claims process. Such opinions and observations provide valuable insight. Focus group sessions and interviews were held throughout the state and involved a sufficient number of participants to identify trends and gain understanding of the current realities of the effects of tort reform on the civil justice system. The results of the focus group sessions conducted by the LBJ School and other related information was made available to the public both directly and on the internet for some time. It has therefore been possible for interested parties to review and evaluate the materials.

Focus groups have been used during the past decade to better understand attitudes, beliefs and practices on a specific subject. Focus groups have become an accepted method of conducting social research. Focus groups have also been used to conduct research regarding governmental issues.

The adopted sections increase or maintain the percentage of rate reduction from those adopted in 1995 and 1996. The increase in the percentage of rate reduction was based on several factors. One factor in the increase was the result of information gathered in the LBJ School Study. This study clearly indicated that tort reform has caused changes in behavior and in the claims settlement environment. The reforms have put defendants in a stronger posture in negotiating settlements. The reforms have also strengthened defense strategies and the willingness to go to trial, rather than settle.

In addition, two supplemental data base pricings were done this year. The first supplemental pricing was a result of the LBJ School Study. The LBJ School Study adduced information that indicated that the past reductions may have been too conservative. For example, in previous pricings, the department focused on the fact that a plaintiff might seek to venue shop to achieve a greater verdict. However, the LBJ School Study found that a plaintiff also tends to venue shop to improve his or her chances of winning the case. Because of reforms in venue shopping, a number of claims might actually disappear.

The second supplemental pricing related to possible data inaccuracies. The department realized that the effect of

allegations under the Deceptive Trade Practices Act (DTPA) and demands for exemplary damages on claims settlements was likely under-reported in the closed claim data. The agency was able to estimate the effect of this under-reporting in the case of the commercial lines bodily injury report.

Based on these sources of data and information, staff made recommendations regarding the percentage of loss and ALAE reductions for each line of insurance covered by article 5.131.

For private passenger automobile liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 6.7 percent to 11.4 percent. Staff therefore recommended the selection of a 9 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted a loss and ALAE reduction percentage of 11.4 percent which is within the range recommended by staff, but is higher than the specific reduction factor proposed by staff.

For commercial automobile liability insurance for bodily injury, staff recommended a loss and ALAE reduction percentage within a range from 9.8 percent to 17 percent. Staff therefore recommended the selection of a 13.5 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 13.5 percent loss and ALAE reduction percentage proposed by staff.

For the liability portion of farm and ranch owners insurance, staff recommended a loss and ALAE reduction percentage within a range from 6.5 percent to 11.2 percent. Staff therefore recommended the selection of a 9 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted a loss and ALAE reduction percentage of 10 percent which is within the range recommended by staff, but is higher than the specific reduction factor proposed by staff.

For professional liability insurance for physicians, staff recommended a loss and ALAE reduction percentage within a range from 12 percent to 17.9 percent. Staff therefore recommended the selection of a 15 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 15 percent loss and ALAE reduction factor proposed by staff.

For professional liability insurance for hospitals, staff recommended a loss and ALAE reduction percentage within a range from 13.3 percent to 20 percent. Staff proposed a 17 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 17 percent loss and ALAE reduction factor proposed by staff.

For commercial liability insurance for damages arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or for completed operations coverage (products/completed operations), staff recommended a loss and ALAE reduction percentage within a range from 13.5 percent to 22.5 percent. Staff therefore recommended the selection of an 18 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 18 percent loss and ALAE reduction factor proposed by staff.

For personal umbrella and excess liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 7 percent to 13 percent. Staff therefore recommended the selection of a 10 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted a loss and ALAE reduction percentage of 12.5

percent which is within the range recommended by staff, but is higher than the specific reduction factor proposed by staff.

For general liability and commercial multi-peril insurance, including fire legal liability, contractual liability, owners and contractors protective liability, railroad protective liability, liquor liability, farm liability and garage liability, staff recommended a loss and ALAE reduction percentage within a range from 12.9 percent to 21.0 percent. Staff therefore recommended the selection of a 17 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 17 percent loss and ALAE reduction factor proposed by staff.

For commercial umbrella insurance, staff recommended a loss and ALAE reduction percentage within a range from 27.4 percent to 34.2 percent. Staff therefore recommended the selection of a 30.0 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 30 percent loss and ALAE reduction factor proposed by staff.

For commercial excess coverage of general liability and commercial multi-peril insurance, staff recommended a loss and ALAE reduction percentage within a range from 32 percent to 38.5 percent. Staff therefore recommended the selection of a 32 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 32 percent loss and ALAE reduction factor proposed by staff.

For commercial excess liability coverage of commercial automobile insurance, staff recommended a loss and ALAE reduction percentage within a range from 25.3 percent to 31.7 percent. Staff recommended the selection of a 25 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 25.3 percent loss and ALAE reduction factor which is within the range recommended by staff, but is higher than the specific reduction factor proposed by staff.

For commercial excess liability coverage for products liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 13 percent to 21.9 percent. Staff therefore recommended the selection of a 20 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 20 percent loss and ALAE reduction factor proposed by staff.

For commercial excess liability coverage for physicians' medical professional liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 15.8 percent to 19.6 percent. Staff therefore recommended the selection of a 17.5 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 17.5 percent loss and ALAE reduction factor proposed by staff.

For commercial excess liability coverage for hospitals' medical professional liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 27.9 percent to 31.7 percent. Staff therefore recommended the selection of a 27.5 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 27.5 percent loss and ALAE reduction factor proposed by staff.

For commercial excess coverage for other professional liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 24.5 percent to 32.8 percent. Staff therefore recommended the selection of a 25 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 25 percent loss and ALAE reduction factor proposed by staff.

For other professional liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 12.8 percent to 27.3 percent. Staff therefore recommended the selection of a 20 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 20 percent loss and ALAE reduction factor proposed by staff.

For pollution liability insurance, staff recommended a loss and ALAE reduction percentage within a range from 9.1 percent to 16.6 percent. Staff therefore recommended the selection of a 12.5 percent loss and ALAE reduction factor. After considering testimony and comments, the Commissioner adopted the 12.5 percent loss and ALAE reduction factor proposed by staff.

The agency believes that the adopted percentages represent a reasonable and fair assessment of the effect of tort reform on the losses experienced by the insurance industry. In adopting the loss and ALAE reduction percentages, the Commissioner considered the testimony and evidence presented by staff and the comments and testimony presented by commenters. The testimony and comments were a factor in the Commissioner's decision to adopt reduction percentages in the higher end of the range recommended by staff for certain lines.

In response to testimony presented at the hearing, and comments submitted to the department, and after further consideration of the issues, eight changes were made to the proposed sections. A formatting change was made to §5.14004(c). Also, the effective date in §5.14004(c) was changed from January 5, 1998, to January 20, 1998. A change was made to §5.14004(c)(1) to increase the reduction percentage for private passenger automobile liability insurance for bodily injury from 9 percent to 11.4 percent. A change was also made to §5.14004(c)(3)(B) to increase the reduction percentage for the liability portion of farm and ranch owner's insurance (for policies effective prior to January 1, 1998) from 9 percent to 10 percent. In addition, a change was made to §5.14004(c)(6) to increase the reduction percentage for personal umbrella and excess liability insurance from 10 percent to 12.5 percent. A change was also made to §5.14004(c)(11)(B) to increase the reduction percentage for commercial excess liability coverage for commercial automobile from 25 percent to 25.3 percent. A change was also made to §5.14004(c)(14) to increase the reduction percentage for the liability portion of farm and ranch owner's insurance (for policies effective after January 1, 1998) from 9 percent to 10 percent. Finally, a change was made to §5.14007(a) to delete (a)(3) since that section was determined to be unnecessary.

This adoption continues in effect §§5.14000 - 5.14011 with amendments to §§5.14002 - 5.14005, 5.14007, 5.14011. The amendments to §§5.14002 and 5.14003 revise subsection numbers. The amendments to §5.14004 add the amount of loss and ALAE reduction percentages applicable to specified lines of insurance for coverages with an effective date on or after January 20, 1998. Amendments to §5.14005 revise the instructions for the calculation and application of rate reduction factors as applied to coverages with an effective date on or after January 20, 1998. Amendments to §5.14007 address filing requirements. Amendments to §5.14011 provide the effective date for the new reduction percentages. Insurers are required to apply the specified loss and allocated loss adjustment expense (ALAE) reduction percentages to the loss and ALAE portion of the rate. This application of the rate reduction will result in a decrease in rates charged to consumers.

## Comment

Several commenters discussed the difficulty in isolating the changes in behavior resulting from tort reform and changes in behavior resulting from other factors. A commenter expressed a belief that what is causing the change in behavior is unsettled. This commenter stated that the changing attitudes of attorneys, jurors, and claims adjusters should not be minimized when trying to measure the true effects of tort reform. Likewise, a person commented that the LBJ School Study indicated that the amount of jury awards are often driven by a general change in jury attitudes separate from the 1995 tort reforms. One commenter stated that it is difficult to separate the trends that are due to tort reform from the trends that are occurring independent of tort reform. Another commenter stated that trends seen in fast track data are not due to the tort reform. A commenter pointed out that the purpose of the rate reduction process is to determine the impact of the 1995 tort reforms and the estimated savings therefrom, not to reflect savings based on general attitude changes.

## Agency Response

The agency acknowledges that there are factors, in addition to tort reform, which account for the change in experience. The agency agrees that the purpose of the rate reduction process is to address changes that are solely the result of tort reform. To identify and isolate these changes, past closed claim data, predating the reforms, was analyzed and a focus group study was conducted by the University of Texas LBJ School of Public Affairs. The objective of such analysis and study was to identify the factors influencing costs that are due to tort reform. The LBJ School Study supports staff's position that tort reform has resulted in changes in the behavior of those involved in the civil justice system. The agency believes that based on the evidence presented, the agency has identified the effects most likely due to tort reform. To the extent that other forces are at work, the measurement of such forces enter into the setting of benchmark rates and the review of individual company filings.

## Comment

Several commenters questioned the use of behavior modification as a large factor in determining the rate reduction percentages. One commenter stated that it is difficult, if not impossible, to distinguish between behavior modification and the normal ebbs and flows of social inflation and deflation. A commenter observed that the behavior modification portion of the proposed reduction percentages was one to one and one-half times greater than the savings calculated from the closed claim study. This commenter also stated that for private passenger automobile bodily injury liability, the amount of the reduction percentage attributed to behavior modification is almost nine times the amount derived from the closed claims calculations. This commenter stated that the inclusion of a savings estimate for behavioral changes is completely subjective and arbitrary.

Similarly, several commenters suggested that the use of a behavior modification factor is duplicative. One commenter suggested that the use of a behavior modification factor will become redundant as more data becomes available. Another commenter stated that as more information emerges, the behavior modification factor should decrease. This commenter also stated that the behavior modification factor and quantitative analysis are overlapping. Similarly, a commenter stated that the time is rapidly approaching when rate filings will be based largely or totally on post-tort reform loss experience.

#### Agency Response

The decision regarding the extent of a rate reduction must be based on information that is available. Since there is a significant time lag between changes in the laws and settled claims, the data available for quantitative analysis does not at this time fully reflect the changes resulting from tort reform. The consequences of tort reform that are not yet apparent from the quantitative data are estimated and measured in the provision for behavior modification. Until substantial quantitative post-reform data become available, the behavior modification factor is still necessary. To assist in assessing the behavioral changes resulting from tort reform legislation, the agency called on the University of Texas LBJ School of Public Affairs to study such behavior changes. Moreover, a large portion of what has been called "behavior modification" is based on objective quantitative savings estimates based on the closed claim data.

The agency disagrees that the inclusion of a behavior modification factor results in duplication. The behavior modification factor supplements the use of quantitative data. Over time, as more post-tort reform quantitative data becomes available, the need for behavior modification factors will decrease and the effects of tort reform will be reflected directly in rate levels.

#### Comment

One commenter stated that more than 50 percent of the claims that were included in the data were basically governed by pre-tort reform law. This commenter stated that this represented a limit to the use of the closed claim data. This commenter also stated that the data did not indicate anything about the level of filings for claims that were not yet closed.

#### Agency Response

The agency recognizes that closed claim data does not fully reflect the effects of tort reform. To obtain a better picture of the effects of tort reform, the LBJ School of Public Affairs was asked to study the issue. The focus group study conducted by the LBJ School enabled the agency to more accurately determine the true effects of tort reform.

#### Comment

One commenter stated that staff's pricing model is essentially a theoretical pricing model. However, this commenter stated that this pricing model is not capturing what is actually happening in the marketplace. This commenter stated that the pricing model is not very strong in this regard.

#### Agency Response

Until substantial actual experience reflecting the tort reforms becomes available, any pricing of the effects of tort reform is, by definition, a theoretical pricing model. The agency believes that the model captures the likely effects of tort reform. The agency recognizes that forces, in addition to tort reform, may affect experience. The effects of forces other than tort reform should be reflected in the review of experience in connection with ratemaking.

#### Comment

One commenter stated that the information regarding the effects of tort reform is not adequate for commercial lines. A commenter urged the agency to keep the original rate reduction percentages from 1995 until there is better empirical data regarding commercial lines. A commenter stated that since commercial lines are subject to loss development over a longer

period of time, the agency should not change the rate reduction percentages for commercial lines.

#### Agency Response

The agency agrees that insufficient time has passed to obtain complete claims data reflecting the actual effect of tort reform on the loss experience. However, the legislature directed the Commissioner to make the best possible estimate of the savings from tort reform and reduce rates accordingly. This rate reduction process involved the review of claims data that predates reform and other available sources of information such as that gathered in the LBJ School Study. The agency believes that the resulting estimates of the effect of tort reform fairly reflect likely savings. The agency agrees that it may be some years before actual post-reform experience will be available for certain lines of insurance, especially some of the long-tailed lines such as professional liability. However, at the present, the agency must make its best estimate of the tort reform savings based on information that is currently available.

#### Comment

Several commenters expressed concerns regarding reliance on the results of a LBJ School Study. One commenter stated that the goals of the LBJ School Study were not fully achieved, especially the goal of providing a documented methodology of quantifying the expected changes due to behavior modification. One commenter stated that the new reductions proposed by staff were based on subjective observations, specifically the LBJ School Study, which was in turn based on unpublished methodology. Another commenter stated that the LBJ School Study provided no new information upon which to make a better judgment than was made in 1995. This commenter also stated that there were conflicting statements made by participants in the study regarding the anticipated effect of the tort reform legislation. This commenter also stated that the only reliable estimate of the true savings from the various reforms are those that had been derived from the various Texas closed claim studies. A commenter expressed concern that the number of participants used in the focus group study was very small and that there were extremely varied opinions expressed by the participants. This commenter stated that a single attorney, claims adjuster or judge is going to have a very limited view of the total cost to an insurance company. A commenter stated that the process of converting the opinions expressed by focus group participants is very vague. This commenter stated that subjective opinions are being converted into economic values based on another set of subjective opinions, resulting in subjectivity being compounded upon itself. Another commenter raised questions about staff's failure to use the Delphi Method to quantify the results of the LBJ School Study.

Conversely, a commenter stated that the focus group approach used in the LBJ School Study was an innovative method of providing insight into losses and provided valuable evidence.

#### Agency Response

The closed claim reports do not yet fully reflect the effects of tort reform. Liability coverages, which are the coverages affected by tort reform tend to take longer to resolve. Therefore, the full effects of tort reform are not yet reflected in the closed claims reports. It may be some time until the full effects of tort reform can be reliably estimated from actual claims experience data. Moreover, certain likely effects of tort reform cannot be measured directly from the closed claim data.

Limitations in the data may mean that some effects are not fully measured. It is therefore necessary to rely on other relevant supplemental information to determine the effect. This includes the opinions and observations of individuals closely involved in the claims process. Such opinions and observations provide valuable insight. Focus group sessions and interviews were held throughout the state and involved a sufficient number of participants to identify trends and gain understanding of the current realities of the effects of tort reform on the civil justice system. The results of the focus group sessions conducted by the LBJ School and other related information was made available to the public both directly and on the internet for some time. It has therefore been possible for interested parties to review and evaluate the materials.

Focus groups have been used during the past decade to better understand attitudes, beliefs and practices on a specific subject. Focus groups have become an accepted method of conducting social research. Focus groups have also been used to conduct research regarding governmental issues.

The Delphi Method is a communication method used to help reach consensus. Staff had discussed the use of the Delphi Method to quantify the information from the LBJ School Study. However, TDI's actuarial staff was able to incorporate the findings from the LBJ School Study into their assumptions to achieve a recommended percentage of reduction. Staff believes that the use of the Delphi Method would not have rendered a substantially different result.

#### Comment

Several commenters urged the agency to consider fast track data in making its decision. One commenter stated that fast track data are highly indicative of significant savings from tort reform. This commenter also stated that fast track data are indicative of a very significant change in the trend, as well as the experience and the level of losses.

#### Agency Response

The agency recognizes that fast track data can be a valuable adjunct to evaluating the effect of tort reform. However, there are several reasons that such data cannot be used blindly as a direct measure. Fast track data reflects all factors affecting claims experience, many of which extend beyond tort reform. For example, national fast track data for automobile liability indicates that there has been a general country-wide improvement in experience. However, only Texas has adopted wide and far-reaching reforms in recent years. Therefore, the national trend indicates that forces in addition to tort reform are affecting claims experience. These other forces are best dealt with in the benchmark proceedings and in the review of individual company filings. Also, fast track data capture claims that are both pre- and post-reform. Such data does not directly measure the effects of tort reform. Finally, fast track data are obtained from insurers that write only a portion of the market in Texas. The results of fast track data differ from industry-wide ratemaking data that is available for concurrent time periods. Thus, although fast track data can indicate general trends, precise measurements cannot be derived from such data.

#### Comment

Several commenters urged the adoption of greater rate reduction percentages, particularly for private passenger automobile. One commenter stated that the savings should be quantified by a rate reduction percentage of at least 15 percent for au-

tomobile bodily injury. One commenter noted that the original 6 percent rate reduction percentage ordered in 1995 was substantially less than the 15 percent set out in article 5.131. A commenter pointed out that participants in the LBJ School Study indicated that private passenger automobile was a line that was experiencing the most savings. One commenter stated that the appropriate tort reform loss and loss adjustment expense reduction should be 23 percent. Another commenter urged the Commissioner to adopt rate reduction percentages higher than what staff recommended. A commenter also suggested that staff had underestimated the savings resulting from legislative changes affecting the recovery of exemplary damages and that the effect of joint and several liability appears to be undervalued for auto accident cases involving more than two vehicles. A commenter also suggested that some recognition should be given to Texas' new summary judgment rule which became effective September 1, 1997 and which gives judges greater authority to dismiss cases that clearly lack evidence.

#### Agency Response

The agency agrees that some of the proposed rate reduction percentages should be increased. The originally proposed loss and ALAE reduction percentages have been adjusted for some lines based on comments and the testimony and evidence presented. Therefore, the percentage of rate reduction for private passenger automobile liability insurance has been increased to 11.4 percent from the proposed reduction percentage of 9 percent. Likewise, the percentage of rate reduction for the liability portion of farm and ranch owner's insurance has been increased to 10 percent from the proposed reduction percentage of 9 percent. Also, the percentage of rate reduction for personal umbrella and excess liability insurance for bodily injury has been increased to 12.5 percent from the proposed reduction percentage of 10 percent. The agency believes that the adopted percentage savings fairly represent the likely changes to loss costs that will result from tort reform in the coming year. Since the new summary judgment rules were not part of the tort reform legislation passed by the 73rd and 74th Texas Legislatures, the new sections may not properly be considered under article 5.131.

#### Comment

One commenter stated that the rate increases granted in 1995 and 1996 offset the previous 6 percent rate reduction. This commenter stated that if there is a claim of a tort savings reduction at the same time there is a rate increase, there is going to be no overall benefit to the consumer. A commenter stated that rate increases in other areas have offset the rate reduction and therefore the rate reduction factors should be increased.

#### Agency Response

Factors other than tort reform will affect rates. These factors include inflation as well as changes in claim frequencies. Therefore, rates will have to be adjusted to reflect market conditions. The statutes require that rates be neither excessive nor inadequate. Other factors may require the adjustment of rates. The Texas Legislature recognized that rates may change even after the adoption of tort reform legislation. Therefore, in article 5.131, the Texas Legislature required that the rate reduction percentages reflect savings due solely to tort reform. The loss and ALAE reduction percentages that have been adopted reasonably reflect these savings. The key is that rates charged consumers are lower than they would have been had

tort reform legislation not been adopted. The rate reduction proceedings and the benchmark rate proceedings are two separate proceedings. To the extent that factors other than tort reform may be influencing experience, such factors will be addressed in benchmark rate proceedings and in the analysis of individual company rate filings.

#### Comment

One commenter stated that insureds are more often encountering the denial of claims by insurance companies. This commenter stated that with tort reform, there is less with which to hold insurers accountable. Therefore, according to this commenter, higher reductions are appropriate.

#### Agency Response

To the extent that claims are wrongfully denied, insureds have recourse through the agency's complaint resolution process or through the civil justice system. To the extent that tort reforms have lowered costs in connection with the handling of claims, the department believes that the rate rollback factor does reasonably reflect this trend.

#### Comment

One commenter stated that many companies simply ignored the rate reductions.

#### Agency Response

The agency is unaware of a company that ignored the tort reform rate reductions. In instances where a company did not reflect tort reform reductions correctly, the company voluntarily changed its rate filing or the agency took appropriate regulatory actions.

#### Comment

A commenter stated that TDI staff indicated that if an insurer claims that its experience already reflects tort reform savings, the agency will allow the insurer to manipulate its ratemaking analysis to offset the tort reform reduction.

#### Agency Response

The agency disagrees that this comment accurately reflects its staff's discussion. The department will not allow "manipulation" to avoid tort reform requirements. The agency recognizes that ratemaking procedures will have to be modified when the experience used in rate filings reflects both pre- and post-reform data. It would be actuarially inappropriate to simply add the two sets of data, without adjustment, to compute rate needs. The precise procedures have not yet been developed, but when such procedures are developed in the near future, they will be announced to all insurers. In any event, all carriers will be required to adjust their rates to appropriately reflect the savings from tort reform.

#### Comment

A commenter recommended that the Commissioner adopt a procedure governing the adjustment of post-tort reform experience periods to prevent tort reform from not being counted in the ratemaking calculations. The commenter recommended that for the time periods before September 1, 1995, the effective date of most tort reforms, the full rate reduction factors should be applied to the entire experience and for experience after September 1, 1995, the factor should not be applied to the paid claims but only to outstanding reserves.

#### Agency Response

The agency agrees that ratemaking procedures will have to be modified when the experience used in rate filings reflect both pre- and post-tort reform data. The precise procedures have not yet been developed. The agency will consider this commenter's recommended approach when developing these procedures.

#### Comment

One commenter asked if a company making a rate filing in 1998 supported by loss experience for 1996 and 1997 must file the rate reduction factors that are promulgated by the Commissioner. This commenter stated that such an adjustment would be an unfair application of the tort reform rate reduction factor.

#### Agency Response

The agency has not yet developed the procedures to be used for ratemaking when the underlying experience partially or fully reflects post-reform experience. Such procedures will be developed to ensure no duplication.

#### Comment

One commenter said that when the tort reform legislation was under consideration by the Texas Legislature in 1995, the insurance industry and the agency indicated that consumers would save between \$800 million and \$900 million as a result of tort reform.

#### Agency Response

The agency acknowledges that in April 1995, \$864 million in savings from tort reform was estimated as the top of a range of rough estimates. This estimate was made on short notice by an agency staff member and was based on the staff member's estimate of the projected percentage of savings. By contrast, the study on which the first rate reduction decision was based represented three months of concentrated effort by nearly every member of the agency's property and casualty actuarial staff and most employees of the agency's Technical Analysis Program. This effort yielded more reliable results. This effort included a data call to insurance companies, working groups of actuaries, lawyers, consumer representative and other interested parties; discussions with plaintiff and defense attorneys on the likely effects of specific reforms; and review of other available information regarding the probable effects of tort reform. In 1997, the agency also obtained information regarding the effects of tort reform from a focus group study conducted by the LBJ School. The total of rate reductions adopted in 1995, 1996 and 1997, have exceeded the \$864 million estimate.

#### Comment

One commenter asserted that tort reform is resulting in a \$1 billion per year windfall to insurers on private passenger automobile liability insurance alone. This commenter stated that in 1996 alone the overcharges are calculated to be \$918 million. This commenter went on to assert that on private passenger automobile liability insurance, insurers' 1996 profit margin was the largest in the past 20 years.

#### Agency Response

The agency disagrees that there has been a \$918 million overcharge as a result of tort reform. The agency believes that the methodology used to calculate the \$918 million figure does not adequately account for all factors. For example,

this purported windfall is derived from a premium base of \$5 billion. However, half of this amount, \$2.5 billion, consists of premiums for coverages that are not subject to tort reform rate reductions factors, such as property damage liability, uninsured/underinsured motorists, and medical payments. In addition, the favorable loss figure was also a result of a reduction of reserves for previous years' claims. The loss ratio trend is seen country-wide as well as in Texas. No other state has recently enacted tort reforms as significant as those recently enacted in Texas. As a result, there is strong evidence that favorable results in Texas are a product of both tort reform and other factors not a part of tort reform. The rate reduction proceedings are, by statute, intended to deal solely with the savings due to tort reform. These other factors are appropriately dealt with in the review of individual company filings and in the benchmark rate proceedings.

#### Comment

A commenter asserted that companies are over-reserving and therefore, overstating their rate needs.

#### Agency Response

The agency does not agree with this statement. Possible excessive reserves are dealt with in the ratemaking process through the application of loss development factors. Moreover, any past possible excessive reserves do not relate to the determination of the savings due to tort reform.

#### Comment

A commenter stated that although uninsured motorist bodily injury is not a line affected by the proposed reductions, there are clearly savings in that line. The commenter stated that a way in which those savings can be included should be considered. Another commenter stated that indemnity payments for uninsured/underinsured motorists are down.

#### Agency Response

The rate reduction percentages proposed by staff in the first tort reform rate reduction proceeding in 1995 included the uninsured/underinsured motorist line. However, this line was deleted from the final adoption because article 5.131 did not specifically include these coverages for application of rate reduction. At that time, the agency expressed its belief that had the legislature intended uninsured/underinsured motorist to be one of the lines of insurance subject to tort reform reductions, article 5.131 would have specifically mentioned those lines and would not have merely made reference to private passenger bodily injury liability. However, over time, any reduction in losses in uninsured/underinsured motorist coverage due to tort reform or other market factors will be captured in the rates established through the benchmark rate hearings.

#### Comment

One commenter suggested that commercial umbrella and excess policies be excluded from the application of the prescribed rate reductions. This commenter stated that the pricing of umbrella and excess policies is quite different from standard policies.

#### Agency Response

In article 5.131, the Texas Legislature included "all lines and sublines of other commercial liability insurance" in the list of coverages to be subject to rate reductions. Such listing includes commercial umbrella and excess policies.

#### Comment

One commenter stated that the frequency of medical professional liability claims has gone down significantly. This commenter stated that the reforms have also reduced the severity of medical professional liability claims. This commenter noted that although exemplary damages are not covered by medical professional liability policies, because of the Stowers doctrine, the reduction in the exposure to exemplary damages has had an effect on the frequency and severity of medical professional liability claims. Another commenter stated that staff has underestimated savings resulting from the bonded expert requirement for medical malpractice lawsuits. This commenter suggested that there are drastic reductions in medical malpractice filings which justify deeper rate cuts. A commenter stated that claims filed against physicians and hospitals dropped 42 percent in frequency between 1995 and 1996. This commenter stated that between 1994 and 1996, there was a 30 percent drop in the number of claims filed per month. This commenter also stated that the percent of claims that are closed with no indemnity paid is continuing to increase.

However, another commenter stated that changes in venue laws have not had a dramatic impact on medical professional liability for doctors. This commenter also stated that the effect of exemplary damages in influencing the settlement or defense of a matter is overstated. One commenter stated that the Deceptive Trade Practices Act (DTPA) was rarely a primary allegation in a medical professional liability claim and did not have any controlling influence on the insurer's handling of the claim. A commenter stated that although there was a drop in the frequency of medical professional liability lawsuits in 1996, there was a dramatic increase in the frequency of lawsuits in 1995 as plaintiffs rushed to file cases before the tort reform legislation went into effect. This commenter stated that averaging the frequency of lawsuits for the 1995 and 1996 years results in a value that is slightly higher than in 1994. This commenter stated that there has been no appreciable change in claim frequency. One commenter stated that the results of an independent evaluation were very comparable to the staff's quantitative analysis.

#### Agency Response

Staff believes that the effects of tort reform on medical professional liability rates have been reasonably estimated based on the latest closed claims data and the LBJ School Study. The agency's review of the available data and the LBJ School Study resulted in an increase in the percentage of medical professional liability rate reduction from prior years.

#### Comment

One commenter recommended that the rate reduction factors for private passenger automobile stay as they are until there is more firm data to substantiate changing them. Other commenters argued that other rate reduction percentages should stay the same.

#### Agency Response

The data used to evaluate the effects of tort reform indicate that tort reform has had a real effect on the legal environment. The LBJ School Study indicated a very definite change in the handling of litigation. In addition, the agency's pricings indicate that tort reform has resulted in lower costs associated with claims. These effects of tort reform justify the increased reductions adopted.



## Comment

One person commented that automobile personal injury lawsuits have continued their steady increase, although other personal injury lawsuit filings declined sharply in 1996 compared to the three previous years.

## Agency Response

The LBJ School Study indicated that insurers are more aggressive in defending claims where liability or damages are questionable or where a reasonable settlements could not be easily obtained. Such aggressive tactics would increase the number of lawsuits, resulting in the pattern observed by the commenter.

## Comment

Another commenter stated that there should not be any scaling of net savings by policy limit but it should be uniform.

## Agency Response

The agency agrees with this comment.

Those making comments against the amendments, arguing that the reduction percentages should be lower than those proposed by staff: Richard Geiger on behalf of Texas Insurance Organization, Jerry Rapp of the Texas Insurance Organization, Ronald Cobb on behalf of the American Insurance Association, Sherman Sitrin on behalf of American International Companies, Joel Whitcraft on behalf of the Medical Protective Company, W. Thomas Cotten on behalf of Texas Medical Liability Trust and Karen Finrich on behalf of USAA.

Those making comments against the amendments, arguing that the reduction percentages should be higher: Rod Bordelon and Allan Schwartz on behalf of the Office of Public Insurance Counsel, Dan Lambe on behalf of Texas Citizen Action, D.J. Powers on behalf of the Center for Economic Justice, Rob Schneider on behalf of Consumers Union, John Opelt on behalf of Citizens Against Lawsuit Abuse, Harold Freeman and Donna Kinney on behalf of the Texas Medical Association, and Birny Birnbaum.

These amendments are adopted under the Insurance Code, articles 5.131, 5.98 and 1.03A. Article 5.131 enacted by the 74th Texas Legislature requires the commissioner of insurance to issue rules each year covered by the article, mandating appropriate rate reductions for certain lines of insurance to pass through, on a prospective basis, the savings that accrue from tort reform legislation enacted in the regular sessions of the 73rd and 74th legislatures. Article 5.131 also provides for the granting of administrative relief and the collection of data to monitor compliance with the statute. Article 5.98 authorizes the commissioner of insurance to adopt rules to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by a statute.

### *§5.14002. Application to Insurers and Monitoring of Insurers.*

(a) This subchapter applies to any insurer that is authorized to do business in this state and that is authorized to write any of the liability lines or sublines set forth in §5.14004 of this title (relating to Loss and ALAE Reduction Percentages by Line), including capital stock companies, mutual insurance companies, Lloyd's plan insurance companies, and reciprocal or interinsurance exchanges.

(b) This subchapter, except for §§5.14003, 5.14004, 5.14005, 5.14006, and 5.14008 of this title (relating to Rulemaking Procedures

for Reductions in Rates, Loss and ALAE Reduction Percentages by Line, Calculation and Application of Rate Reduction Factor, Duration, and Administrative Relief), also applies, to the limited extent of passing through savings on a prospective basis and monitoring of compliance with the legislative directive, to county mutuals, joint underwriting associations, and other insurers, whether rate regulated or not, for those lines which are not rate regulated.

(c) All insurers shall pass through the savings from the tort reform legislation to their policyholders on a prospective basis for the lines or sublines of insurance identified in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line).

(d) All insurers that write any of the types of coverages or lines and sublines identified in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line), shall provide information to the department in the form of rate filings, special data calls, informational hearings, and any other means consistent with other provisions of the Insurance Code and determined by the commissioner to be necessary to monitor compliance with the provisions of Article 5.131, Insurance Code, and this subchapter.

### *§5.14003. Rulemaking Procedures for Reductions in Rates.*

(a) On or before September 1 of each year, the commissioner shall hold a rulemaking hearing to determine the loss and ALAE reduction percentages for each line or subline of insurance identified in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line).

(b) The commissioner shall amend or adopt rules, as necessary, mandating the use of the loss and ALAE reduction percentage for the lines and sublines identified in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line).

(c) The loss and ALAE reduction percentages or the adjusted benchmark rate adopted or determined by the commissioner under this subchapter shall be included in the rate charged for each policy or coverage with an effective date on and after January 1, 1996, and to each policy or coverage effective on and after the 90th day after the date of each subsequent commissioner's order adopting the loss and ALAE reduction percentages or determination of the adjusted benchmark rate under this subchapter.

### *§5.14004. Loss and ALAE Reduction Percentages by Line.*

(a) The rate or charge for each policy containing any of the following coverages with an effective date on and after January 1, 1996, shall, insofar as the subject liability coverage is concerned, be reduced by the application of rate reduction factors calculated as provided in §5.14005 (relating to Calculation and Application of Rate Reduction Factor) using the loss and ALAE reduction percentages in subsection (c) of this section.

(b) A single loss and ALAE reduction percentage is used for coverages written on an occurrence policy basis. Three loss and ALAE reduction percentages are used for coverages written on a claims made policy basis effective on or after January 1, 1996 but before January 1, 1997. Two loss and ALAE reductions percentages (claims made policy percentages (1) and (3)) are used for coverages written on a claims made policy basis effective on or after the effective date of this rule.

(1) claims made policy percentage 1 is the loss and ALAE reduction percentage that reflects the reduction due to all of the tort reform legislation;

(2) claims made policy percentage 2 is the loss and ALAE reduction percentage that reflects only those reductions due to the tort reform legislation applying to claims filed and suits commenced on

or after September 1, 1995 and which arise from actions accruing before that date;

(3) claims made policy percentage 3 is the loss and ALAE reduction percentage that reflects only the reductions due to the tort reform legislation applying to claims filed and suits commenced on or after September 1, 1996 and which arise from actions accruing before September 1, 1995.

(c) The first loss and ALAE reduction percentages shown for each line is applicable to policies effective on or after January 1, 1996 but before January 20, 1998; the second reduction percentage is applicable to policies effective on or after January 20, 1998:

(1) private passenger automobile liability insurance for bodily injury\_\_\_ 7.5% / 11.4%

(2) commercial automobile liability insurance for bodily injury\_\_\_ 12.0%; / 13.5%

(3) the liability portion

(A) of homeowner's insurance\_\_\_ 0% / 0%

(B) of farm and ranch owner's insurance (for policies effective prior to January 1, 1998)\_\_\_10.0% / 10.0%

(C) of renter's insurance\_\_\_0% / 0%

(4) professional liability insurance as defined in the Insurance Code, article 5.15-1 for:

(A) physician, other health care provider -

(i) claims made policy percentage 1\_\_\_11.5% / 15.0%

(ii) claims made policy percentage 2\_\_\_3.5% / NA

(iii) claims made policy percentage 3\_\_\_8.5% / 12.8%

(iv) occurrence policy\_\_\_11.5% / 15.0%

(B) hospital

(i) claims made policy percentage 1\_\_\_15.0% / 17.0%

(ii) claims made policy percentage 2\_\_\_3.5% / NA

(iii) claims made policy percentage 3\_\_\_8.5% / 10.5%

(iv) occurrence policy\_\_\_15.0% / 17.0%

(5) commercial liability insurance for damages arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or for completed operations coverage (products/completed operations)\_\_\_12.5% / 18.0%

(6) personal umbrella and excess liability insurance\_\_\_7.5% / 12.5%

(7) the liability portion of commercial multi-peril insurance

(A) with a divisible premium, refer to §5.14005(d) of this title (relating to Calculation and Application of Rate Reduction Factor)

(B) with an indivisible premium, including business owner's policies\_\_\_12.5% / 17.0%

(8) the employer's liability portion of workers' compensation insurance\_\_\_0% / 0%

(9) commercial general liability, which includes premises medical, fire, legal liability, personal advertising injury, contractual liability, and liability for all premises\_\_\_12.5% / 17.0%

(10) commercial umbrella\_\_\_18.0% / 30%

(11) commercial excess liability

(A) general liability/commercial multiple peril\_\_\_18.0% / 32%

(B) commercial automobile\_\_\_18.0% / 25.3%

(C) products liability\_\_\_18.0% / 20%

(D) medical professional - physicians, other health care provider

(i) claims made policy percentage 1\_\_\_15.0% / 17.5%

(ii) claims made policy percentage 2\_\_\_4.5% / NA

(iii) claims made policy percentage 3\_\_\_11.5% / 15.9%

(iv) occurrence policy\_\_\_15.0% / 17.5%

(E) medical professional - hospitals -

(i) claims made policy percentage 1\_\_\_20.0% / 27.5%

(ii) claims made policy percentage 2\_\_\_4.5% / NA

(iii) claims made policy percentage 3\_\_\_11.5% / 12.5%

(iv) occurrence policy\_\_\_20.0% / 27.5%

(F) other professional

(i) claims made policy percentage 1\_\_\_17.5% / 25.0%

(ii) claims made policy percentage 2\_\_\_0.5% / NA

(iii) claims made policy percentage 3\_\_\_17.0% / 9.0%

(iv) occurrence policy\_\_\_17.5% / 25.0%

(12) professional liability other than insurance described by paragraph (4) of this section -

(A) claims made policy percentage 1\_\_\_12.0% / 20%

(B) claims made policy percentage 2\_\_\_1.0% / NA

(C) claims made policy percentage 3\_\_\_11.0% / 15.4%

(D) occurrence policy\_\_\_12.0% / 20.0%

(13) other commercial liability insurance, if not already covered as a part of coverage in paragraph (9) of this section, when written as a monoline coverage or added to another policy, including the following lines and sublines:

(A) fire legal liability\_\_\_12.5% / 17.0%

(B) contractual liability\_\_\_12.5% / 17.0%

(C) pollution liability

(i) claims made policy percentage 1\_\_\_6.0% / 12.5%

(ii) claims made policy percentage 2\_\_\_1.0% / NA

(iii) claims made policy percentage 3\_\_\_5.5% / 7.2%  
(iv) occurrence policy\_\_\_6.0% / 12.5%

(D) owners and contractors protective liability\_\_\_12.5% / 17.0%

(E) railroad protective liability\_\_\_12.5% / 17.0%

(F) liquor liability

(i) claims made policy percentage 1\_\_\_12.5% / 17.0%

(ii) claims made policy percentage 2\_\_\_2.0% / NA

(iii) claims made policy percentage 3\_\_\_8.0% / 11.0%

(iv) occurrence policy\_\_\_12.5% / 17.0%

(G) farm liability\_\_\_12.5% / 17.0%

(H) garage liability\_\_\_6.0% / 17.0

(I) all other commercial liability lines and sub-lines\_\_\_12.5% / 17.0%

(14) the liability portion of farm and ranch owner's insurance (for policies effective after January 1, 1998)\_\_\_10% / 10%  
*§5.14005. Calculation and Application of Rate Reduction Factor.*

(a) For those lines or sublines of insurance that have a benchmark rate, a rate reduction factor will be calculated by the department using the loss and ALAE reduction percentages set forth in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line) and relevant industry average expenses for the applicable line or subline. This rate reduction factor shall be applied to the applicable benchmark rate to arrive at an adjusted benchmark rate for purposes of this section.

(1) For rates for policies or coverage with an effective date on and after January 1, 1996, the insurer shall apply its flex percent on file with the department to the adjusted benchmark rate.

(2) For subsequent filings, the insurer shall apply its flex percent developed without consideration of tort reform to the adjusted benchmark rate then in effect.

(b) For those lines and sublines other than those subject to the Insurance Code, article 5.101, the loss and ALAE reduction percentage shall be used by each insurer to calculate the rate reduction factor to be applied to occurrence policy rates in effect on January 1, 1996 for the lines or sublines identified in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line) according to the following method:

(1) The insurer shall apply the loss and ALAE reduction percentage to the loss and allocated loss adjustment expense (ALAE) portion of the rate.

(2) The insurer shall add the provision for other company fixed expenses, including unallocated loss adjustment expenses (ULAE), to the loss and ALAE portion of the rate as adjusted in paragraph (1) of this subsection.

(3) The insurer shall add the provision for other company fixed expenses, including ULAE, to the loss and ALAE portion of the rate before the adjustment for the loss and ALAE reduction percentage in paragraph (1) of this subsection.

(4) The rate reduction factor is equal to the ratio of the value calculated in paragraph (2) of this subsection to the value calculated in paragraph (3) of this subsection.

(5) The insurer shall apply the rate reduction factor directly to the rate.

(c) For those lines and sublines other than those subject to the Insurance Code, article 5.101, the claims made policy loss and ALAE reduction percentages shall be used by each insurer to calculate the rate reduction factor to be applied to claims made policy rates in effect on January 1, 1996 for the lines or sublines identified in §5.14004(c) of this title (relating to Loss and ALAE Reduction Percentages by Line) according to the following method:

(1) The insurer shall determine in accordance with the instructions in the version of Form TR-3A-R, Calculation of Tort Reform Impact, Claims Made Policies, and Form TR-3B-R, Calculation of Rating Values, Claims Made Policies applicable to the policy year:

(A) that part of the loss and ALAE portion of the rate to which claims made policy percentage 1 applies;

(B) that part, if any, of the loss and ALAE portion of the rate to which claims made policy percentage 2 applies; and

(C) that part, if any, of the loss and ALAE portion of the rate to which claims made policy percentage 3 applies.

(2) The insurer shall apply the appropriate claims made policy loss and ALAE reduction percentage to each of the three parts of the loss and ALAE portion of the rate determined in paragraph (1) of this subsection, add the calculated reductions and subtract this sum from the total loss and ALAE portion of the rate.

(3) The insurer shall add the provision for other company fixed expenses, including ULAE, to the loss and ALAE portion of the rate as adjusted in paragraph (2) of this subsection.

(4) The insurer shall add the provision for other company fixed expenses, including ULAE, to the loss and ALAE portion of the rate before the adjustment for the claims made policy loss and ALAE reduction percentages in paragraph (2) of this subsection.

(5) The rate reduction factor is equal to the ratio of the value calculated in paragraph (3) of this subsection to the value calculated in paragraph (4) of this subsection.

(6) The insurer shall apply the rate reduction factor directly to the rate.

(7) The department adopts and incorporates herein by reference, Form TR-3A-R Calculation of Tort Reform Impact, Claims Made Policies, and Form TR-3B-R, Calculation of Rating Values, Claims Made Policies. The department publishes a version of Forms TR-3A-R and TR-3B-R for policies effective in each of the years 1996, 1997 and 1998. These forms may be obtained from the Technical Analysis Division, Mail Code 105-5G, Texas Department of Insurance, 333 Guadalupe, P. O. Box 149104, Austin, Texas 78714-9104.

(d) For package coverages, such as commercial multi-peril, where premiums are based on the premiums for each of its component monoline coverages, the rate reduction factor, if any, appropriate to each of the various component monoline coverages shall be applied by the insurer.

(e) For insurers writing any commercial liability or professional liability lines or large risk, the rate reduction factor for the specific line identified in §5.14004 of this subchapter (relating to Loss and ALAE Reduction Percentages by Line) may be reduced by the

individual tort reform component specified in Form TR95 or TR97, Pricing Components by Tort Reform, if coverage for the specific tort reform identified in Form TR95 or TR97 is specifically excluded from the policies. Insurers shall be required to file a certification form, developed by the department, that indicates the rate reduction factor used, the specific individual tort reform components used to reduce the factor, the premium volume affected, and such other information determined by the department. The department adopts and incorporates herein by reference Forms TR95 and TR97, Pricing Components by Tort Reform. These forms are published by the Texas Department of Insurance and may be obtained from the Technical Analysis Division, Mail Code 105-5G, Texas Department of Insurance, 333 Guadalupe, P. O. Box 149104, Austin, Texas 78714-9104.

(f) Insurers shall apply the appropriate rate reduction factor to the rates used to determine minimum premiums, maximum premiums and other rating values under retrospective rating plans.

(g) For umbrella or excess policies that are rated as a percentage of the underlying primary policy rates, the insurer may adjust the umbrella or excess policy rate reduction factor to eliminate any duplication in the loss and ALAE reduction percentages as follows:

(1) Determine the rate reduction factor appropriate to the umbrella or excess policy as specified in subsections (a) or (b) of this section.

(2) Determine the rate reduction factors appropriate to each of the insurer's underlying primary policies as specified in subsections (a) or (b) of this section.

(3) Compute a weighted average rate reduction factor for the underlying primary policies using the insurer's statewide average distribution of premiums for the underlying policies at limits corresponding to the retention under the umbrella or excess policy.

(4) The adjusted umbrella or excess policy rate reduction factor is equal to the ratio of the value calculated in paragraph (1) of this subsection to the value calculated in paragraph (3) of this subsection.

(5) In no event shall the ratio calculated in paragraph (4) of this subsection exceed one (1.000).

(6) The insurer shall apply the adjusted rate reduction factor directly to the percentage used to calculate its umbrella or excess policy premiums.

*§5.14007. Filing Requirements.*

(a) Each insurer which is required to apply the rate reduction factor shall file a certification form, developed by the department, for each line or combination of lines subject to this subchapter, executed by an officer or director of the insurer which indicates what the rate of the insurer would have been without application of the rate reduction factor for tort reform legislation and what the rate is with application of the rate reduction factor.

(1) an initial certification form shall be filed with the department, no later than December 1, 1995, for the insurer's rates that are to be effective January 1, 1996.

(2) For any rate filing made by an insurer subject to this subchapter, with an effective date on and after January 1, 1996, the insurer shall file the rate filing in accordance with applicable rules currently in effect at the time of the filing regarding justification for the filed rates and the certification form.

(b) Each non-rate regulated insurer and those insurers writing non-rate regulated lines shall file a certification form, developed by

the department, for each line or combination of lines subject to this subchapter, executed by an officer or director of the insurer which indicates what the rate of the insurer would have been without application of the prospective savings for tort reform legislation and what the rate is with application of the prospective savings for tort reform legislation. The certification form will include information on the premium volume of the insurance and explanation of the overall rate reduction applied by the insurer.

*§5.14011. Loss and ALAE Reduction Percentages Applicable in Specified Years.*

The loss and ALAE reduction percentages by line as set forth in §5.14004 of this title (relating to Loss and ALAE Reduction Percentages by Line) shall remain in effect until January 1, 2001, or until further order of the commissioner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713886

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 10, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 463-6327

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**TITLE 30. ENVIRONMENTAL QUALITY**

**Part I. Texas Natural Resource Conservation Commission**

**Chapter 113. Control of Air Pollution from Toxic Materials**

The commission adopts new Subchapter C, §§113.180, 113.190, 113.200, 113.280, 113.340, and 113.380, concerning National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6834). These requirements are contained in 40 Code of Federal Regulations (CFR) Part 63. The United States Environmental Protection Agency (EPA) is developing these national standards to regulate emissions of hazardous air pollutants under the Federal Clean Air Act (FCAA) Amendments, Section 112. These NESHAPs for source categories are technology based standards and commonly referred to as Maximum Achievable Control Technology (MACT) Standards.

**EXPLANATION OF ADOPTED RULES** The commission adopts by reference, without changes, six of the federal MACT Standards. These rules are being adopted by the commission in order to relieve industry of the burden of duplicative and/or conflicting federal and state regulations that may address related emissions control, reporting, recordkeeping, monitoring, and testing requirements. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or the EPA is the agency responsible for implementation of the standards. With delega-

tion, the commission will be responsible for administration and enforcement of the MACT requirements.

These six federal rules, each of which are under their own undesignated head of the same name, are Perchloroethylene Dry Cleaning Facilities, 40 CFR 63, Subpart M; Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 CFR 63, Subpart N; Ethylene Oxide Sterilization Facilities, 40 CFR 63, Subpart O; Epoxy Resins Production and Non-Nylon Polyamides Production, 40 CFR 63, Subpart W; Petroleum Refineries, 40 CFR 63, Subpart CC, and Aerospace Manufacturing and Rework Facilities, 40 CFR 63, Subpart GG. The commission is seeking formal delegation from the EPA, for these six rules, under 40 CFR 63, Subpart E, which implements the FCAA Amendments, Section 112(l).

As other MACT standards continue to be promulgated, they will be reviewed for compatibility with current state regulations and policies. The commission will then incorporate them into Chapter 113 through formal rulemaking procedures and request formal delegation from the EPA. No state rule or program is federally approved and enforceable unless and until it is approved by the EPA through the full Section 112(l) process.

There may be overlapping requirements between these federal rules and existing state rules for the control of volatile organic compound (VOC) emissions contained in 30 TAC Chapter 115. The commission anticipates that the VOC reduction rules will be modified due to EPA revisions to the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter in 1997. The commission believes the most appropriate time to resolve conflicts with promulgated MACT standards will be in conjunction with future revisions to Chapter 115 required for implementation of the new NAAQS.

**TAKINGS IMPACT ASSESSMENT** The commission has prepared a Takings Impact Assessment for this proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to facilitate implementation and enforcement of the MACT standards by the state and to prevent any duplicate requirements. While the MACT standards will result in a significant expense to the regulated industries, they do not constitute a taking of private real property. Additionally, the exemptions in Senate Bill 14 allow for the promulgation of rules mandated by federal actions.

**COASTAL MANAGEMENT PLAN** The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area, (31 TAC

§501.14(q)). This rulemaking will adopt by reference, without changes, six federal MACT standards contained in 40 CFR Part 63, and is therefore consistent with this policy.

**HEARING AND COMMENTERS** A public hearing was held in Austin on August 14, 1997. The comment period closed August 21, 1997. No oral comments were received at the public hearing. One written comment was received from the Southwest Drycleaners Association, in favor of the adoption.

The commission appreciates the support.

## Subchapter C. National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)

### Perchloroethylene Dry Cleaning Facilities

#### 30 TAC §113.180

**STATUTORY AUTHORITY** The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This rule is being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713768

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 5, 1997

Proposal publication date: July 22, 1997

For further information, please call: (512) 239-1970



### Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

#### 30 TAC §113.190

The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This rule is being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

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## Ethylene Oxide Sterilization Facilities

### 30 TAC §113.200

The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This rule is being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

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For further information, please call: (512) 239-1970



## Epoxy Resins Production and Non-Nylon Polyamides Production

### 30 TAC §113.280

The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This rule is being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970



## Petroleum Refineries

### 30 TAC §113.340

The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This rule is being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970



## Aerospace Manufacturing and Rework Facilities

### 30 TAC §113.380

The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This rule is being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970



## Chapter 115. Control of Air Pollution from Volatile Organic Compounds

### Subchapter F. Miscellaneous Industrial Sources Perchloroethylene Dry Cleaning Systems

#### 30 TAC §§115.521-115.527, 115.529

The commission adopts the repeal of §115.521, concerning Emission Specifications; §115.522, concerning Control Requirements; §115.523, concerning Alternate Control Requirements; §115.524, concerning Inspection Requirements; §115.525, concerning Testing Requirements; §115.526, concerning Recordkeeping Requirements; §115.527, concerning Exemptions; and §115.529, concerning Counties and Compliance Schedules without changes as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6837).

**EXPLANATION OF ADOPTED RULE REPEALS** The commission adopts these revisions to Chapter 115 and to the State Implementation Plan in order to repeal rules which are no longer necessary. Sections 115.521-115.527 and 115.529 are based upon a United States Environmental Protection Agency (EPA) Control Techniques Guideline (CTG) guidance document, "Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems," issued in December, 1978. The requirements of §§115.521-115.527 and 115.529 are being repealed subsequent to final action by the EPA to exclude perchloroethylene (perc) from the federal definition of "volatile organic compound" on February 7, 1996 (61 Federal Register (FR) 4588) due to perc's negligible photochemical reactivity. The EPA's action means that the perc dry cleaning CTG no longer has the regulatory status of a CTG for purposes of ozone control, and therefore states may repeal their CTG-based perc dry cleaning rules.

However, perc will continue to be regulated as a hazardous air pollutant under the Federal Clean Air Act, §112. Specifically, the EPA issued a National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulation limiting emissions from perc dry cleaners on September 22, 1993 (58 FR 49376), with a final compliance date of September 22, 1996. In the July 22, 1997, issue of the *Texas Register* (22 TexReg 6835), the commission proposed revisions to Chapter 113, concerning Control of Air Pollution from Toxic Materials, which incorporates this perc dry cleaning NESHAP by reference.

The perc dry cleaning NESHAP rules include an exemption from the add-on control requirements for existing dry-to-dry and transfer machines located at dry cleaners with total perc consumption of less than 140 or 200 gallons per year, respectively. ("Existing" means construction or reconstruction began before December 9, 1991. New machines installed on or after December 9, 1991 are considered "new" and must be equipped with

at least a refrigerated condenser upon startup.) Consequently, repealing the Chapter 115 perc dry cleaning rules means that these smaller existing facilities in Dallas, Harris, and Tarrant Counties will no longer have to use add-on controls.

Because repealing the Chapter 115 perc dry cleaning rules would allow smaller dry cleaners in Dallas, Harris, and Tarrant Counties to increase their perc emissions, an analysis of the implications of this potential increase was conducted. The emissions from a small perc dry cleaners were modeled with screening modeling, which generally overestimates the concentrations. In order for the review to be conservative, the worst-case conditions were assumed (perc usage right at the 200 gallon/year exemption threshold; short distance to the property line; etc.). The results of the modeling were reviewed by the Toxicology and Risk Assessment Section and determined to be acceptable. In addition, any existing dry cleaners currently complying with the Chapter 115 perc dry cleaning rules are likely to continue using their add-on controls due to the value of the recovered perc. Therefore, the Chapter 115 perc dry cleaning rules can simply be repealed, with the perc dry cleaning NESHAP superseding it.

**TAKINGS IMPACT ASSESSMENT** The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal rules which are no longer necessary for control of ozone formation. Promulgation and enforcement of these rule repeals will not affect private real property which is the subject of the rule because the rule repeals do not impose new requirements, but repeal existing requirements.

**COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW** The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Code of Federal Regulations, Title 40, to protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule repeals; however, minor increases in perc emissions may occur at smaller perc dry cleaners in Dallas, Harris, and Tarrant Counties. The commission has evaluated this potential increase and determined it to be insignificant. Therefore, in compliance with 31 TAC, §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

**HEARING AND COMMENTERS** A public hearing on this proposal was held in Austin on August 14, 1997. The comment period closed August 21, 1997. No commenters submitted oral testimony. One commenter, Southwest Drycleaners Association (SDA), submitted written comments which supported the

proposed revisions. No commenters opposed the proposed revisions.

SDA supported the proposed repeal of the Chapter 115 per dry cleaning rules, since this would avoid unneeded duplication of the per dry cleaning NESHAP.

The commission appreciates the support.

**STATUTORY AUTHORITY** The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713767

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970



## Chapter 122. Federal Operating Permits

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the repeal of §§122.10-122.12, 122.120, 122.130, 122.132-122.136, 122.138, 122.139, 122.141, 122.143, 122.145, 122.150, 122.152-122.155, 122.161, 122.163-122.165, 122.201, 122.202, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.233, 122.241, 122.243, 122.310-122.312, 122.314, 122.410, 122.411, 122.420-122.422, 122.425, 122.427, 122.430, 122.432, 122.434, 122.435, 122.437, 122.438, and 122.440, and new §§122.10, 122.12, 122.110, 122.120, 122.121, 122.130-122.134, 122.136, 122.138-122.140, 122.142-122.146, 122.148, 122.161, 122.165, 122.201, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.241, 122.243, 122.312, 122.320, 122.322, 122.330, 122.350, 122.360, 122.410, 122.412, 122.414, 122.501-122.506, and 122.508, concerning the federal operating permit program.

New Sections 122.10, 122.12, 122.110, 122.120, 122.121, 122.130-122.134, 122.136, 122.139, 122.142-122.146, 122.148, 122.161, 122.165, 122.201, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.243, 122.312, 122.320, 122.322, 122.350, 122.360, 122.410, 122.412, 122.414, 122.501-122.506, and 122.508 are adopted with changes to the proposed text as published in the May 13, 1997, issue of the *Texas Register* (22 TexReg 4140) and May 20, 1997, issue of the *Texas Register* (22 TexReg 4347). Sections 122.138, 122.140, 122.204, 122.241, and 122.330 and the repeals are adopted without changes and will not be republished.

**EXPLANATION OF ADOPTED RULES.** The commission has chosen to revise the rule language through the repeal of affected sections and their replacement with new sections. This

approach was determined to be more efficient than amending the existing sections due to the extensive nature of the revisions.

Title V of the Federal Clean Air Act Amendments of 1990 (FCAAA), enacted on November 15, 1990, requires the United States Environmental Protection Agency (EPA) to promulgate regulations within 12 months of enactment that require and specify the minimum elements of state operating permit programs. Part 70 of Chapter I, Title 40 of the Code of Federal Regulations (40 CFR 70) contains these provisions. Title 30 Texas Administrative Code Chapter 122 (30 TAC 122) was adopted August 23, 1993, to implement the regulatory authority of the federal operating permit program required by 40 CFR 70. Revisions to 30 TAC 122 are adopted as the result of comments received from EPA, the regulated community, and public interest groups.

The revisions reorganize 30 TAC 122 into six subchapters: Subchapter A, concerning Definitions; Subchapter B, concerning Permit Requirements; Subchapter C, concerning Initial Permit Issuances, Revisions, Reopenings, and Renewals; Subchapter D, concerning Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition; Subchapter E, concerning Acid Rain Permits; and Subchapter F, concerning General Operating Permits. These revisions reflect changes based on EPA's proposed and final interim approval notices, discussions with the regulated community and public interest groups, and a regulatory reform effort by the agency to make rule language more straightforward and easy to understand.

**Regulatory Reform.** Changes to the rule language as the result of ongoing efforts by the commission for regulatory reform appear throughout the rules and will not be individually discussed in this preamble. These changes are for purposes of simplification and clarification only and do not involve substantive changes in the requirements of this chapter. In general, these changes involve using shorter sentences, limiting each citation to one main concept, reordering requirements into a more logical sequence, and using more commonplace terminology. In addition, some of the definitions have been moved to more appropriate sections or chapters. Definitions that apply agency-wide belong in 30 TAC Chapter 3, while definitions that apply to the all the air rules are appropriate in 30 TAC Chapter 101. Both the definitions for Act or Federal Clean Air Act (FCAA) and United States Environmental Protection Agency or EPA have been moved to Chapter 3. The nonattainment classifications for the counties in Texas which were listed under the definition of major source have also been moved to Chapter 3. Furthermore, the definition of fugitive emissions has been removed because it was redundant with the essentially equivalent definition in Chapter 101. The definitions of affected state and responsible official have been moved to §122.330 and §122.165 respectively, where these terms have the most relevance.

Under the original Subchapter E, 40 CFR 72 (relating to the Acid Rain Program) was incorporated by reference; however, several Part 72 requirements were also explicitly stated in the state regulation. Through the regulatory reform process, the commission determined that the combination of incorporating by reference and restating some of the federal requirements was inefficient and confusing. Therefore, except for the identification of the application deadlines, the redundant language has been removed from Subchapter E. The definitions in §122.12, relating to Acid Rain Definitions, that were redundant with the definitions



in 40 CFR 72 have also been removed. The only definition in §122.12 that appears in 40 CFR 72 is the definition of acid rain program, which is included because the term is used several places in the rule language before the incorporation by reference of 40 CFR 72 in Subchapter E.

In addition, the commission is repealing some sections and adopting new sections to conform with regulatory reform efforts. The new §122.121, relating to Prohibition on Operation, contains the requirement originally in §122.201(f). Section 122.141, relating to Authority, was determined to contain an unnecessary statement in subsection (a), and subsection (b) has been moved to §122.161. New §§122.144-122.146, relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions, have been created to contain requirements originally grouped together under §122.143. The original §122.145, relating to Permit Content Requirements, has been moved to §122.142. Furthermore, §§122.150 and 122.152-122.155, concerning Public Notice Requirements, have been moved to Subchapter D; and §122.202, relating to General Permits, has been moved to Subchapter F. Section 122.163, relating to Effective Date, has been deleted, because it was determined to be unnecessary, while §122.164, relating to Confidential Information, has been deleted because 30 TAC §1.5(d) addresses confidential information. Finally, the information in the original §122.243, relating to Permit Expiration, has been moved to §122.241.

*Response to Deficiencies Noted by and/or Negotiated with EPA.* In its June 7, 1995, proposal to grant interim approval, EPA noted 19 specific deficiencies that the commission needed to address prior to obtaining both interim and full program approval (see 60 FR 30037). The commission responded to EPA's deficiencies in a letter to Jole Luehrs, Chief, New Source Review Section, EPA Region 6 from Jeff Saitas, Deputy Director, Office of Air Quality, TNRCC dated October 3, 1995.

In its June 25, 1996, notice of final interim approval, EPA provided 18 specific comments, some of which cited deficiencies that the commission needed to address prior to full program approval (see 61 FR 30037). Many of the deficiencies that EPA noted in the June 25, 1996, notice restated original deficiencies raised in the June 7, 1995, notice. In addition, the June 25, 1996, notice also included EPA's comments (i.e., further deficiencies) on the commission's responses to the deficiencies stated in the June 7, 1995, notice.

With regard to the criteria used for full program approval, EPA stated in the June 25, 1996, notice that it would rely on the version of 40 CFR 70 in effect at the time of full program submittal (see 61 FR 32693). However, since there is so much uncertainty as to when the 40 CFR 70 revisions will be final, it may be unreasonable for Texas (or any other state) to fully comply with a major rule revision by the time the full program submittal is due to EPA (January 26, 1998). Therefore, EPA recently clarified this remark by stating that it is EPA's intent to provide in the final rule revising 40 CFR 70 that the criteria governing state or local program approvals will be either the original July 21, 1992, regulation or the final 40 CFR 70 revisions, or some appropriate combination of the two (March 27, 1997, letter from Lydia Wegman, Deputy Director, EPA Office of Air Quality Planning and Standards to Dan Pearson, Executive Director, TNRCC).

It should also be noted that EPA promulgated an extension of states' interim program approvals on August 29, 1997 (see 62

FR 45732). The extension automatically extends all operating permits program interim approvals until October 1, 1998. In addition, states may also request an additional extension (between 18 and 24 months) if they choose to combine corrections to their interim approvals with program revisions necessary to implement the revisions to Part 70 which are expected to be promulgated mid-summer of 1998. The commission intends on requesting the additional extension immediately after the Part 70 revisions are promulgated. Assuming no statutory changes are required by the Part 70 revisions, the commission would receive an additional 18-month extension after the date the Part 70 revisions are promulgated.

As a result of the extension, interim approval deficiencies do not have to be corrected until the commission submits its combined program submittal (addressing interim approval deficiencies and Part 70 revisions). However, the commission has attempted to correct the majority of deficiencies noted by EPA in the proposed rulemaking. In some cases, the commission has decided to wait until the combined program submittal to correct more difficult and complicated deficiencies. Specifically, the commission has decided to postpone determining how minor new source review (NSR) will be codified in Chapter 122. Until that time, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on the complicated issue.

The following summarizes the commission's response to the deficiencies that EPA indicated in both its June 7, 1995, and June 25, 1996, *Federal Register* notices. It should be noted that unless otherwise indicated in this preamble, the revisions to 30 TAC 122 are intended to be consistent with the July 21, 1992, 40 CFR 70 regulations (see 57 FR 32295). In certain cases, the revisions to 30 TAC 122 reflect the commission's most current understanding of the proposed 40 CFR 70 revisions. The commission has limited changes based on the proposed 40 CFR 70, to those minor issues that are not expected to change upon promulgation of the final revisions. Those issues are limited to the definition of site, regarding research and development facilities; the reference to FCAA, §302(j), regarding the consideration of fugitive emissions for FCAA, §111 and §112 sources; the definition of Title I modification; and operational flexibility.

1. Minor NSR/40 CFR 70 Integration. In the June 7, 1995 notice, EPA pointed out that 30 TAC 122 does not properly address minor NSR as an applicable requirement. Specifically, EPA noted that the definition of applicable requirement, sections on permit application, permit revisions, and permit content do not properly include minor NSR. For full program approval, EPA maintains that the appropriate sections of 30 TAC 122 must be revised to include minor NSR (see 60 FR 30039). In the June 25, 1996 notice, EPA commented that for full program approval, the commission must provide operating permits that include all minor NSR permits (see 61 FR 32694).

Due to the recent interim approval extension promulgated by the EPA, the commission has decided not to address how minor NSR will be codified in Chapter 122 at this time. Rather, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue and address it in the combined program submittal 12 month after the Part 70 revisions are promulgated.

2. Compliance with the June 20, 1996, 40 CFR 70 Rule. In the June 7, 1995 notice, EPA stated that if the August 29, 1994, proposal for Operating Permit Program Interim Approval Criteria became final (see 59 FR 44572), the commission would be required to meet the requirements of that rule in order to receive *interim approval*. On June 20, 1996, EPA promulgated the final rule that provided a mechanism to approve programs (on an interim basis) that did not include minor NSR requirements (see 61 FR 31443). For any program that does not include minor NSR requirements, the final rule requires that each permit issued during the interim program comply with the following: include a statement in permits that minor NSR requirements are not included in permits issued during the interim period; indicate how citizens may obtain access to excluded minor NSR permits; include a cross-reference in each operating permit to the minor NSR permit; include a statement indicating that the excluded minor NSR requirements are not eligible for the permit shield under 40 CFR §70.6; and require reopening of permits for incorporation of minor NSR permit conditions upon or before granting of full approval.

The commission will include standardized permit provisions in each operating permit issued under the interim program to meet the requirements of the first four items listed in the previous paragraph. Furthermore, as requested in the June 25, 1996 notice, the commission will also include a standardized permit provision that clearly states that major NSR authorizations (prevention of significant deterioration and nonattainment authorizations) are incorporated in each operating permit issued during the interim program.

With regard to the requirement to reopen the operating permit to include minor NSR upon or before granting full program approval, if it is finally determined necessary, the commission is proposing to follow the permit revision procedure in effect for incorporating minor NSR at the time that EPA grants Texas full program approval. This approach is consistent with 40 CFR §70.4(d)(3)(ii)(D) provided in the final rule promulgated on June 20, 1996 (see 61 FR 31448-31449).

3. Source Applicability of 40 CFR 70. In the June 7, 1995 notice, EPA states that §122.120(4)(A)-(C), regarding applicability of 40 CFR 70 and the Texas federal operating permit program, is inconsistent with the federal definition specified in 40 CFR §70.3(a) (see 60 FR 30039-30040).

With regard to §122.120(4)(A) and (B), EPA believes that there could be some confusion over whether the rule exempts major sources subject to FCAA, §111 or §112 from the requirement to obtain a federal operating permit.

The commission read the original §122.120(4) to clearly state that non-major sources are not required to obtain a federal operating permit until EPA no longer exempts these sources through rulemaking. Therefore, it follows that subparagraphs (A)-(C) only applied to non-major sources. The purpose of subparagraphs (A)-(C) was to define non-major sources consistent with 40 CFR 70.

In the October 3, 1995, letter to Jole Luehrs, Chief, New Source Review Section, EPA Region 6 from Jeff Saitas, Deputy Director, TNRCC Office of Air Quality responding to EPA's June 7, 1995 notice, the commission proposed revisions to §122.120(4)(A)-(C) to address the deficiency.

In the June 25, 1996 notice, EPA noted that the commission did not adequately address revisions to §122.120(4)(C) (see 61

FR 32695). Specifically, EPA disagreed with the commission proposal that included "any area source, in a source category designated by the Administrator." EPA maintained that the administrator may designate a number of different types of sources subject to Title V permitting, not just area sources.

In order to minimize any confusion and to resolve these deficiencies, the commission has revised §122.120(4) to clarify that the rule is not exempting major sources from applicability to 30 TAC 122. In addition, the language has been revised to clarify that EPA may designate any non-major source in a source category, not just FCAA, §111 and §112 sources, as being subject to the operating permits program.

4. Treatment of Research and Development (R&D) Facilities. In the June 7, 1995 notice, EPA maintains that the treatment of research and development facilities through the definition of site in 30 TAC 122 is inconsistent with the original 40 CFR 70 (July 21, 1992) (see 60 FR 30040). Furthermore, EPA states that the commission must treat research and development facilities consistent with 40 CFR 70 in order to obtain full program approval.

The commission believes that the preamble to the July 21, 1992, 40 CFR 70 rule clearly states that research and development facilities would be treated as though they were a separate source (and required to have a Title V permit) only if the research and development facility were itself a major source (see 57 FR 32264). "White Paper Number 1," Streamlined Development of 40 CFR 70 Permit Application, published on July 10, 1995, seems to clarify EPA's position on research and development facilities. As stated in the White Paper Number 1, EPA intends to clarify through final rulemaking of 40 CFR 70 that research and development facilities will only be considered major sources if the research and development facility itself is major or the research and development facility is a support facility making a significant contribution to the product of a collocated manufacturing facility and the combined emissions exceed the major source thresholds. In the August 31, 1995, supplemental proposal to 40 CFR 70, referred to as the "supplemental proposal," EPA proposed a definition of major source which reflects its position in White Paper Number 1 (see 60 FR 45565).

The commission has revised the definition of site in 30 TAC 122 to clearly reflect that if research and development facilities produce products for commercial sale, they will be included with the collocated facility for purposes of Title V applicability and permitting. Otherwise, research and development facilities will be considered a separate site. The commission believes that this revision is consistent with White Paper Number 1 and will be consistent with the final 40 CFR 70 revisions.

5. Definition of Regulated Air Pollutant. In the June 7, 1995 notice, EPA points out that 30 TAC 122 does not define regulated air pollutant, but rather air pollutant (see 60 FR 30040). The EPA claims in the proposed interim approval notice that major sources should be determined on the potential to emit *any* air pollutant including those compounds *listed* in FCAA, §112 (including §112(r)(3)), regardless of whether the compounds are subject to a standard or other requirement.

However, in the supplemental proposal (see 60 FR 45565), EPA revised its position and proposed that being listed in FCAA, §112(r)(3) is not a criterion in determining the status of a regulated air pollutant. Therefore, the commission has revised the 30 TAC 122 definition of air pollutant as follows: "(F) any

pollutant subject to a standard promulgated under FCAA, §112 (relating to Hazardous Air Pollutants) or other requirements established under §112, including §112(g) and (j). However a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r)."

6. Definition of Regulated Major Source. In the June 7, 1995, and the June 25, 1996 notices, EPA stated that the 30 TAC 122 definition of major source as it relates to requiring the inclusion of fugitive emissions for source categories regulated under FCAA, §111 or §112 is not consistent with the existing 40 CFR 70 (see 60 FR 30041 and 61 FR 32695). For full program approval, EPA indicated that the commission definition of major source as it relates to requiring the inclusion of fugitive emissions must be consistent with 40 CFR 70.

Specifically, in the 30 TAC 122 definition, source category xxvii only applies to "any other stationary source category which as of August 7, 1980, is being regulated under the Act, §111 or §112" whereas the July 21, 1992, 40 CFR 70 does not limit the stationary source categories to those which existed as of August 7, 1980.

In EPA's August 29, 1994, proposed 40 CFR 70 revisions (see 59 FR 44527), the definition of major source, source category xxvii, was revised to include references to those source categories regulated by an FCAA, §111 or §112 standard promulgated as of August 7, 1980, and would be consistent with the definition in 30 TAC 122 if adopted. However, in the supplemental proposal (see 60 FR 45565), EPA again revised the definition of major source, source category xxvii. This proposed revision requires fugitive emissions be included for source categories subject to standards promulgated under FCAA, §111 or §112 for which the *administrator has made an affirmative determination under FCAA, §302(j)*. In the preamble to the supplemental proposal (see 60 FR 45547), EPA states that "until it promulgates this future 302(j) rulemaking, EPA believes that fugitives should not be counted for source categories subject to section 111 or 112 standards promulgated after August 7, 1980."

Both proposed 40 CFR 70 revisions seem to indicate that fugitive emissions will not be included for source categories subject to FCAA, §111 or §112 standards promulgated after August 7, 1980, until further FCAA, §302(j) rulemaking. The commission has revised the definition of major source (category (xxvii)) to be consistent with the supplemental proposal as follows: "(xxvii) any stationary source category regulated under FCAA, §111 or §112 for which EPA has made an affirmative determination under FCAA, §302(j) (relating to Definitions)."

7. Definition of Title I Modification. In the June 7, 1995 notice, EPA points out that if the definition of Title I modification is finalized to include minor NSR changes, Texas would be eligible for interim but not final approval (see 60 FR 30041). However, if the final definition excludes changes reviewed under minor NSR and changes that trigger a pre-1990 National Emission Standards for Hazardous Air Pollutants requirement, the commission's definition of Title I modification would be consistent with 40 CFR 70.

In the June 25, 1996 notice, EPA stated that if the definition of Title I modification was finalized as proposed in the supplemental proposal, the commission's proposed definition would be consistent with 40 CFR 70 (see 61 FR 32695). However, if the definition of Title I modification was changed from that

proposed in the supplemental proposal, the commission would have to revise the definition consistent with 40 CFR 70.

The supplemental proposal (see 60 FR 45565) indicates that minor NSR is not included in the definition of Title I modification. In addition, the revision process proposed in the supplemental proposal does not make reference to Title I modification.

Similarly, the commission does not reference Title I modification in the 30 TAC 122 revision process. As such, the commission has deleted the definition of Title I modification from 30 TAC 122, resulting in an approach that should be consistent with the final 40 CFR 70 revisions.

8. Compliance Schedule Requirements. In the June 7, 1995, notice, EPA stated that §122.132(b)(3)(B) was not as stringent as 40 CFR §70.5(c)(8)(iii)(C) because it did not require the compliance schedules to be at least as stringent as "any judicial consent decree or administrative order to which the source is subject." (see 60 FR 30041).

As such, the commission has revised this section (now §122.132(e)(4)(C)(iii)) to clarify that the compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.

9. Application Shield for Significant Modifications. In both the June 7, 1995, notice and the June 25, 1996 notice, EPA stated that the provisions in §122.138 incorrectly allow an application shield for significant permit modifications (see 60 FR 30041 and 61 FR 32695). The EPA stated that 40 CFR §70.7(b) does not allow significant permit modifications to be afforded an application shield for a timely and complete application, but rather only applies to a "timely and complete application for permit issuance (including for renewal)."

In response, the commission has deleted the reference to "significant permit modification" from the application shield provisions of §122.138.

10. Changes Allowed Under Administrative Amendment. In the June 7, 1995 notice, EPA objected to the procedure specified in §122.211(5), because it allowed "changes similar to those in §122.211(1)-(4)" to be made by administrative amendment without approval by EPA as a part of the approved 40 CFR 70 program (see 60 FR 30041). For full approval, EPA suggests that §122.211(5) specifically list those "similar" changes to be allowed under administrative amendment.

In response, the commission has revised §122.211(5) (now §122.211(6)) to require that "similar" changes be approved by EPA.

11. Permit Addition Procedures. In the June 7, 1995 notice, EPA stated that it does not consider the permit addition procedures outlined in §122.215 to be equivalent with the minor permit modification procedures specified in 40 CFR §70.7(e)(2) and stipulates that it must be revised for Texas to gain full approval (see 60 FR 30042). In the June 25, 1996 notice, EPA further states that the commission must comply with the version of 40 CFR 70 in effect at the time of full program submittal (see 61 FR 32696). As previously mentioned, EPA recently clarified this remark by stating that it is EPA's intent to provide in the final rule revising 40 CFR 70 that the criteria governing state or local program approvals will be either the original July 21, 1992, regulation or the final 40 CFR 70 revisions, or some appropriate combination of the two.

In response, the commission has replaced the previous revision process with a new process contained in Subchapter C of 30 TAC 122. As discussed in the section of this preamble addressing changes to Subchapter C, permit additions have been deleted and replaced with a revision process substantially equivalent to the revision process outlined in EPA's July 21, 1992, final 40 CFR 70 regulation.

12. Public Notice to Include Emissions Change. In the June 7, 1995 notice, EPA stated that 40 CFR §70.7(h) requires that the public notice include the emissions change involved in any permit modification. EPA pointed out that §122.153 does not specify this requirement (see 60 FR 30042). The EPA reiterated this point in the June 25, 1996, notice by stating that in order to obtain full program approval, the commission must include the emissions changes in (the public notice for) any permit modification (see 61 FR 32696).

In response, the commission emphasizes that 40 CFR §70.7(h) seems to require that "emissions change" information be included in the public notice for significant permit modifications only, not all modifications. Section 70.7(h) begins by stating "Except for modifications qualifying for minor permit modification procedures...." Therefore, because administrative permit revisions don't involve public notice, it follows that "emissions change" information need only be included in the public notice for significant permit modifications, not all modifications. As a result, in §122.320(b)(5), the commission has required that the public notice for all significant permit revisions, as defined in §122.219, include "the air pollutants with emission changes."

13. Fugitive Emissions Included in Permit Application. In the June 7, 1995 notice, EPA stated that the permit application must include fugitive emissions from units not subject to an applicable requirement as specified in 40 CFR §70.3(d) (see 60 FR 30043). EPA stated that 30 TAC 122 may not include such fugitive emissions. Furthermore, EPA believes that this omission is tied to the fact that minor NSR was not an applicable requirement of the original 30 TAC 122 regulation (adopted August 23, 1993).

In the June 25, 1996 notice, EPA maintains that in order to obtain full program approval, the commission must require sources to quantify fugitive emissions from units covered by an applicable requirement. For fugitive emission units that are not covered by an applicable requirement, EPA states that a general description of the emissions would suffice (see 61 FR 32696).

It should be noted that when determining whether a site in Texas is major and therefore subject to the operating permit program, the potential emissions from all emission units are summed for each individual air pollutant, regardless of whether the emission unit has an applicable requirement. Thus, the potential emissions of both point sources and fugitive sources (if the source is one of the 27 named source categories) should be included when determining a site's major source status.

With respect to describing emissions of regulated pollutants for all emission units "(including fugitive emissions) from units without any applicable requirements," White Paper Number 1 (issued by EPA on July 10, 1995) and "White Paper Number 2," White Paper Number 2 for Improved Implementation of the 40 CFR 70 Operating Permits Program (issued by EPA on March 6, 1996) seem to indicate that additional emissions information will not be necessary where a source would stipulate to the applicability of a requirement and/or its major status. With the emphasis on defining applicable requirements, rather than emission rates, it is not necessary to quantify the emissions

of fugitive emission sources (or a point source, for that matter) unless it has an associated applicable requirement.

The commission is not requiring any specific emissions data to be submitted with operating permit applications, unless it is necessary for an applicability determination. Any emission rates necessary to verify compliance with an applicable requirement must be provided. The commission will also require applicants to provide a general description of the site's emissions in the process description submitted with the initial permit application.

14. Limiting a Source's Potential to Emit. In the June 7, 1995 notice, EPA stated that §122.122 may serve as a mechanism for sources that choose to establish federally-enforceable emission limitations during the transition period set out by EPA in a January 25, 1995, policy memorandum ("Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under 112 and Title V of the Clean Air Act (Act)," John Seitz) if an acceptable certification process can be developed between Texas and EPA addressing the source's acceptance of federal enforceability (see 60 FR 30043). The commission notes that the transition period was extended from January 25, 1997 to July 31, 1998 in an August 27, 1996, policy memorandum ("Extension of January 25, 1995 Potential to Emit Transition Policy," John Seitz). Although EPA did not cite a deficiency associated with this issue and no revisions to §122.122 have been made, the commission is taking this opportunity to respond to EPA's comments.

The commission uses a similar registration procedure in the NSR Division to establish federally-enforceable emission rates for standard exempted facilities. Under this procedure that has been used since September 13, 1993, under §106.6, a source may establish federally-enforceable emission rates in a registration that is maintained on-site. The certified registration of emissions established under §122.122 is required to be kept on-site and will be submitted to the commission or EPA upon request. These registrations would be available for inspection and review for EPA, commission, or any other air pollution control agency having jurisdiction. The commission staff believes this is an acceptable certification process and will continue to use this certification process to ensure federal enforceability for those sites limiting their potential to emit under the operating permit program.

15. Renewal of General Permits. In the June 7, 1995 notice, EPA stated that 40 CFR §70.4(b)(3)(iii) requires states to issue operating permits for a period not to exceed five years, and therefore the commission should limit the general operating permit term to a maximum of five years (see 60 FR 30043).

In response, the commission has revised Subchapter F to require the general operating permit rules to be renewed once every five years. In addition, general operating permit holders will be required to submit applications for the renewal of their authorizations to operate at least every five years.

16. Section 122.145(e) Interpretation Shield. In the June 7, 1995 notice, EPA expressed concerns with the potential ambiguities surrounding the "interpretation shield" outlined in §122.145(e) and called out three specific items that had to be addressed through a written commitment by the commission *prior to obtaining final interim approval* (see 60 FR 30043). These items included: interpretations made under §122.145(e) must be limited to applicability issues only; EPA shall have the opportunity to review and veto every §122.145(e) action; and

interpretations must be based on the most recent EPA guidance and any commission written guidance pre-approved by EPA.

The commission agreed to those conditions and was granted final interim approval by EPA on June 25, 1996. For full program approval, EPA insisted that the commission revise §122.145(e) to reflect the three requirements mentioned. However, the commission has deleted the "interpretation shield" concept outlined in §122.145(e) and replaced it with a more traditional permit shield described in 40 CFR 70, §70.6(f). The commission believes the permit shield requirements under §122.148 are consistent with §70.6(f).

17. **Emergency Provisions.** In the June 7, 1995 notice, EPA stated that the notification requirements for major upsets outlined in Chapter 101 (General Rules), §101.6, are inconsistent with the emergency provisions of 40 CFR §70.6(g)(3)(iv) (see 60 FR 30043-30044). In addition, in the June 25, 1996 notice, EPA states that in order for Texas to receive full approval, 30 TAC 122 must be consistent with 40 CFR 70 (see 61 FR 32696).

As discussed in the response to comments portion of this preamble, 30 TAC 122 does not provide for an affirmative defense from noncompliance for sources. However, in 30 TAC §101.11, the recently adopted amendments to Chapter 101 (22 TexReg 7040, July 29, 1997) do provide, conditions for an exemption of unauthorized emissions from limits in permits, rules, and orders of the commission during upsets, maintenance, and start-ups and shutdowns. The commission believes that, as the result of the amendments, §§101.6, 101.7, and 101.11 provide sufficient relevant evidence to meet the requirements of §70.6(g).

18. **Operational Flexibility.** In the June 7, 1995 notice, EPA stated that the operational flexibility section of 30 TAC 122, §122.221, is inconsistent with 40 CFR §70.4(b)(12) and §502(b)(10) because it could potentially allow modifications that violate what EPA considers applicable requirements (see 60 FR 30044). In addition, in the June 25, 1996 notice, EPA states that in order for Texas to receive full approval, 30 TAC 122 must be consistent with the version of 40 CFR 70 in effect at the time of full program submittal (see 61 FR 32696). As previously mentioned, EPA recently clarified this remark by stating that it is EPA's intent to provide in the final rule revising 40 CFR 70 that the criteria governing state or local program approvals will be either the original July 21, 1992, regulation or the final 40 CFR 70 revisions, or some appropriate combination of the two.

As evidenced in the supplemental proposal, EPA has decided to delete the definition of FCAA, §502(b)(10) from 40 CFR §70.2) as well as delete the reference to §502(b)(10) changes in 40 CFR §70.4(b)(12). As such, the commission has deleted the operational flexibility provisions previously contained in §122.221 to be consistent with the anticipated final 40 CFR 70 revisions. Operational flexibility will be provided largely through the revision process outlined in Subchapter C.

19. **Off-permit Changes Compared with Permit Additions.** In the June 7, 1995 notice, EPA stated that the permit addition procedures specified in §122.215 would allow companies to make changes that EPA does not consider "off-permit" (See 60 FR 30044). The EPA cited the commission's narrow definition of "applicable requirement" as the main problem.

In response, the commission has deleted references to off-permit changes under the permit addition revision process outlined in §122.215 and replaced them with a new revision

process that will not allow an applicant to make changes that EPA considers to be off-permit. As discussed in the section of this preamble addressing changes to Subchapter C, the revision process has been structured to be substantially equivalent to the process outlined in the July 21, 1992, 40 CFR 70. With regard to EPA's concern that the definition of applicable requirement is too narrow, the commission restates that because of the recent interim approval extension, the commission has decided not to address the issue of how minor NSR is codified in Chapter 122 at this time. Rather, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue and address it in the combined program submittal 12 months after the Part 70 revisions are promulgated.

20. **Four-year Permit Program Cost.** (see 60 FR 30044, first and second column). In the June 7, 1995, notice, EPA pointed out that 40 CFR §70.4(b)(8)(v) requires the state to provide an estimate of the permit program costs for the first four years after approval and a description of how the state plans to cover the costs.

The commission has provided EPA with the agency's operating budget for fiscal years 1994 and 1995. On March 11, 1997, the commission provided EPA with the approved 1996-1997 budgets, which included the estimated costs of the operating permit program (OPP) in a letter from Karen Olson, Director, TNRCC Operating Permits Division to Allyn Davis, Director, Multimedia Planning and Permitting Division, EPA Region 6. In addition, the commission will forward the budgets for 1998-2000 to EPA as they are available.

*Subchapter A: Definitions.* Several other changes to the rule language have been made as a result of comments received from the regulated community and public interest groups.

The definition of applicable requirement has been revised to remove the references to 30 TAC Chapter 114 (relating to Control of Air Pollution from Motor Vehicles) and 30 TAC Chapter 118 (relating to Control of Air Pollution Episodes), neither of which are within the scope of the federal operating permit program. In addition, the exemption, previously contained in subparagraph (L) of the definition of applicable requirement and now contained in §122.10(2)(K), has been expanded to clarify that requirements for mobile sources and any state-only requirements are not applicable requirements under the OPP. Furthermore, the definition of applicable requirement has been revised to include a subset of requirements termed federally enforceable only applicable requirements. Federally enforceable only applicable requirements are those applicable requirements which have been promulgated by EPA, but have not been adopted by and delegated to the commission. Until adoption by the commission, these requirements will be federally enforceable only and will be designated as such in the permit. Federally enforceable only applicable requirements will be subject to all the procedural requirements of the OPP. This designation is necessary, because although the commission does have the broad statutory authority to enforce rules, it does not have the specific regulatory authority to enforce rules until the requirements for state rulemaking, including an opportunity for public comment, have been satisfied. This issue is further discussed in the response to comments.

Several other changes to the definitions have been made to accommodate revisions to the program. In order to remove any ambiguity, the definition of deviation has been tied to the

monitoring, recordkeeping, reporting, and testing requirements codified in the permit. The definition for emission allowable under the permit has been removed, because this term is not used within the rule language. The definition of major source has been revised to account for any federal exemptions granted under FCAA, §182(f), relating to NO<sub>x</sub> requirements. For purposes of clarification, a definition for notice and comment hearing has been included in response to a request from a public interest group. The definition of preconstruction authorization has been expanded to include requirements established under FCAA, §112(g) and (j), which will be implemented through Texas' NSR Program. Furthermore, a definition of provisional terms and conditions has been added to address the new revision process outlined in the discussion of revisions to Subchapter C.

In addition, a definition for state-only requirement has been included. Although state-only requirements are not applicable requirements, they will be codified in the permit in order to provide a more comprehensive compliance and enforcement tool. A state-only requirement is any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement. While state-only requirements will be codified in the permit, they will not be subject to any of the following requirements: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

As a result of Senate Bill 1126 enacted by the 74th Texas Legislature and the subsequent changes made to Chapter 116, the agency has decided not to address the establishment of grandfather rates through the provisions of 30 TAC 122. Consequently §122.11, concerning Grandfather Definitions, has been repealed. All other references to grandfather requirements, including §122.132(a)(5) and §122.135, have also been removed from the rule language. The deleted grandfather requirements did not implement any part of Title V or 40 CFR 70.

*Subchapter B: Permit Requirements.* Section 122.110 has been added to provide for delegation of authority to the executive director to take action on any permit on behalf of the commission. In addition, the executive director may delegate authority to take action on any permit to the director of the Operating Permits Division. The initial application due dates have been revised in §122.130 in order to provide the executive director sufficient time to fulfill the statutory requirement to take final action on one-third of the full program applications in each of the first three years of the full program. Further discussion of the revised application dates is provided in the response to comments. The commission has also revised §122.130 to address application deadlines for sites that become subject to the program as the result of some action by EPA or the commission. For instance, the reclassification of a county's attainment or nonattainment status or the release of new calculation methods by EPA could cause a site's potential to emit to exceed the major source thresholds and become subject to the operating permit program.

The phased application process is a new concept introduced in §122.131 as a result of the large number of complex sources in Texas. This approach will allow qualified applicants more time to submit accurate and complete application information and

provide staff the extra time needed to thoroughly review and process the information. As agreed by EPA in the February 7, 1996, letter from Mary Nichols, EPA Assistant Administrator for Air and Radiation, the phased application process will allow applicants with 75 or more emission units in a nonattainment area, or 150 or more emission units in an attainment area, to submit a portion of their detailed applicability information in phases. All general applicability determinations (e.g., New Source Performance Standards (NSPS) Kb, or 30 TAC Chapter 111) must be submitted with the initial application. For each emission unit, the initial permit application must include detail sufficient to clarify the applicant's obligations with respect to its applicable requirements, including emission limits and compliance terms. The initial application will include a portion of the detailed applicability determinations, identifying the specific regulatory citations within the rules and regulations to which the source is subject. The remaining detailed applicability determinations will be incorporated into the permit annually through either the reopening process or the significant permit revision process. Upon renewal, any detailed applicability determinations not yet addressed in the permit will be incorporated through the renewal process. All permits will include all detailed applicability determinations by no later than July 25, 2003.

The EPA is currently in the process of establishing requirements pursuant to FCAA, §504(b) and §114(a)(3) through the proposed Compliance Assurance Monitoring (CAM) rule, 40 CFR 64. Based on EPA's August 2, 1996, draft rule, CAM is anticipated to satisfy the enhanced monitoring requirements under the FCAA. The agency will review and address additional monitoring requirements when the CAM rule is promulgated. Periodic monitoring requirements will be addressed as discussed in the response to comments.

Section 122.132(c) allows applicants to submit abbreviated applications. The abbreviated application will include identifying information regarding the site and the applicant as well as a certification by a responsible official. The executive director will require the remaining information to be submitted when it is needed for review of the application. Because the initial applications will be reviewed and issued over a period of several years, this approach will help minimize the number of times the applications need to be updated before the review begins. The concept of the abbreviated application is consistent with guidelines in EPA's White Paper Number 1. Further discussion of the abbreviated application is provided in the response to comments.

The application compliance certification requirements in §122.132 have been revised to clarify that the statements of future compliance are based on the intent of the responsible official at the time of application. This revision was made because, given that there is always the possibility of unforeseen and unavoidable circumstances, the responsible official cannot reasonably be expected to make an absolute statement of future compliance. These requirements were also revised to clarify that the certification must be based on, at a minimum, any compliance method specified in the permit. Further discussion of these changes is provided in the response to comments. Additionally, the revised rule specifies that for units that are not in compliance with the applicable requirements, the certification must identify the method used to assess compliance. This information is important for staff evaluating and working to remedy instances of noncompliance.

An application's timely and complete status determines whether or not the applicant qualifies for an application shield. Therefore, §122.133 and §122.134, concerning Timely Application and Complete Application, have been revised to address only those situations in which an application shield is relevant. The references to permit revisions have been removed, because the applicant is already operating under a permit and is in no need of an application shield.

The commission has also revised §122.139 to specify that the executive director has the authority to approve, void, or deny a permit application.

A new §122.140, concerning Representations in Application, has been adopted to clarify that for general permit applications and acid rain permit applications, representations in the applications do become conditions under which the owner or operator must operate. This clarification is important because in both these cases, it is the application in conjunction with the permit that assures compliance with the applicable requirements.

The requirements in the original §122.143(1)(H) have been deleted. These requirements allowed the permit holder to wait until permit renewal to have newly promulgated requirements incorporated into the permit, if less than three years remained in the permit term. This change was initiated by public interest groups as a suggestion to make the requirement consistent with the revision process in Subchapter C that requires applications for administrative and minor permit revisions to be submitted annually.

Section §122.143 has also been modified to include procedures for revising a permit to incorporate changes in federally enforceable only or state-only designations. In addition, new language has been adopted specifying that the permit (or authorization to operate, application, and a copy of the general operating permit) must be maintained at the location specified in the permit (or authorization to operate). In most cases, this information will need to be maintained on-site to assist the permit holder with compliance and the inspectors with enforcement. However, for unmanned sites this may not be practical and the permit will specify another location at which the information will be maintained.

Permit requirements found originally in §122.143, relating to recordkeeping, reporting, and compliance certification requirements, have been moved to and clarified in §122.144, relating to Recordkeeping Terms and Conditions, §122.145, relating to Reporting Terms and Conditions, and §122.146, relating to Compliance Certification Terms and Conditions. As discussed in the response to comments, the frequency of deviation reporting has been revised such that deviations will be reported under Chapter 101 and as required by the applicable requirement, but never less frequently than every six months. The requirements for the annual compliance certification in §122.146 have been revised for clarity when certifying compliance with terms and conditions that are not based on emission limitations or standards and to address require additional information to be submitted for emission units that have had deviations. This information is necessary for staff to effectively evaluate instances of noncompliance.

The certification by responsible official information has been consolidated in §122.165. For acid rain sources, the definition of a responsible official has been revised to allow a responsible official that does not qualify as a designated representative, to

sign the Title V portion of the permit. This change is consistent with the proposed revisions to 40 CFR 70.

*Subchapter C: Initial Permit Issuances, Revisions, Reopenings, And Renewals.* To provide adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the commission has replaced the existing revision process under 30 TAC 122 with a process that is substantially equivalent to the July 21, 1992, 40 CFR 70 revision process. Title 40 CFR 70.7(e) specifies that for a program to be approved as substantially equivalent, it must not provide less permitting authority, EPA or affected state review, or public participation than is provided in 40 CFR 70. The 30 TAC 122 permit revision process meets or exceeds the 40 CFR 70 requirements in each of these respects. As is required by 40 CFR 70, all permit revisions will be subject to review and approval by the permitting authority. Consistent with 40 CFR 70, administrative permit revisions under 30 TAC 122 are not subject to any procedural requirements such as public notice or EPA review. Minor permit revisions will be subject to an electronically announced 30-day public comment period, an affected state review, and a 45-day EPA review; while EPA's minor permit modification process involves only EPA review and affected state review. As is required by 40 CFR 70, significant permit revisions will undergo all the procedural requirements associated with initial issuance. Those requirements are a 30-day public comment period noticed in a newspaper, affected state review, opportunity for a hearing, 45-day EPA review, and a 60-day public petition period. For each type of permit revision, the 30 TAC 122 process meets or exceeds the federal requirements based on the criteria established in 40 CFR 70 for evaluating substantially equivalent programs.

The new permit revision process includes three different tracks: administrative permit revisions, minor permit revisions, and significant permit revisions. Administrative permit revisions are those of the least environmental significance and involve correcting typographical errors, changing name, address, phone, increasing monitoring frequency, etc. Minor permit revisions are of more environmental concern and involve, for example, adding new applicable requirements or removing emission units no longer in operation from the permit. Significant permit revisions, on the other hand, are of the most environmental significance and include removing requirements from emission units remaining in operation, establishing permit shields, and case-by-case determinations.

The new revision process matches the environmental significance of the change to the degree and type of review required to process the permit revision. Under the new procedures, changes requiring administrative permit revisions and minor permit revisions may be operated before the permit is revised, provided certain conditions are satisfied. The procedures for making a change without prior approval, specified in §122.213(a) and §122.217(a), are optional. If the permit holder chooses not to comply with those requirements, the permit must be revised before the change can be operated. In order to make a change without prior approval, the permit holder must first obtain and comply with all required preconstruction authorizations under 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. The permit holder must also comply with all underlying applicable requirements and state-only requirements. Furthermore, the permit holder must establish and maintain enforceable provisional terms and conditions that contain all the new applicable

requirements and state-only requirements the source is subject to as the result of the change.

The provisional terms and conditions must codify the new requirements to the same level of detail as required in the permit. Provisional terms and conditions must be consistent with and accurately incorporate the applicable requirements and state-only requirements and cannot authorize the violation of any applicable requirement or state-only requirement. The provisional terms and conditions must be maintained with the permit and become enforceable terms and conditions of the permit. In every case, the applicable requirements and state-only requirements are always enforceable. The permit holder may also be subject to enforcement action if the permit holder makes a change using one of the revision tracks and the change is later determined not to qualify as that type of permit revision.

If a change qualifying as an administrative permit revision is made without prior approval, the permit holder must record, and maintain with the permit, all the information that will be required to be submitted with the application for the permit revision. If the change is a minor permit revision, the permit holder must submit a notice to the agency containing all the information required in the application before the change is made. In both cases, this information will include: a description of the change, a description of the emission units affected, the provisional terms and conditions, a statement that the change qualifies for the revision, and a certification by a responsible official. The permit holder will then collect all the changes for each year and submit an application to have the permit revised on an annual basis. This annual process allows the permit holder to consolidate the procedural requirements such as public announcement and EPA review. Through this process, staff can thoroughly review all changes qualifying as administrative and minor permit revisions once each year instead of continually processing small changes throughout the year. In addition to allowing the applicant the flexibility to make necessary changes at a site while still assuring compliance with the underlying requirements, this process allows for a more efficient use of commission and EPA resources.

Changes requiring significant permit revision are the most environmentally significant and cannot be made without prior approval. These changes are subject to all the procedural requirements of initial issuance, which include public notice, affected state review, notice and comment hearing, EPA review, and public petition.

*Subchapter D: Public Announcement, Public Notice, Affected State Review, Notice And Comment Hearing, Notice of Proposed Final Action, EPA Review, And Public Petition.* In order to provide additional access to the public, the commission has developed public announcement procedures to be used for minor permit revisions. These procedures provide a 30-day public comment period that will be announced on the Texas Natural Resource Conservation Commission bulletin board system and on the Internet. By taking advantage of electronic media, the commission is able to provide a 30-day public comment period for the middle permit revision track. This additional public comment period is not required in 40 CFR 70.

The rule provides for a single publication in a newspaper of general circulation in the city where a site is located. Bilingual newspaper notices and sign postings will be provided as they are under Chapter 116. These revisions are consistent with statutory requirements and the requirements of 40 CFR 70.

In a previously adopted rule, the commission has allowed a combination of the public notice of the draft permit and the notice of hearing. The rule provides that if the notices are combined, and a bilingual notice is required to be published, the complete combined notice will be published in the appropriate alternate language. In addition, since §122.201(e) specifies that more than one permit may be issued for a site, §122.320(c) was added to the rule language to clarify that references to multiple permits may be included in one public notice for the site. The public notice requirements will apply to initial issuance, significant permit revisions, reopenings, and renewals.

Section 122.350(c) and §122.360(d) were also revised to be consistent with 40 CFR 70.8(c)(1) and to clarify that EPA can only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

*Subchapter E: Acid Rain Permits.* The acid rain requirements of 40 CFR 72, 74, and 76 have been incorporated by reference into Subchapter E. The commission has not been delegated the authority to enforce the acid rain program; consequently, 40 CFR 73, 75, 77, and 78 have not been included. A provision has been added to allow the requirements in 30 TAC 122 to substitute for any references to 40 CFR 70 in 40 CFR 72, 74, and 76. This allows the executive director to implement one OPP in Texas rather than trying to implement certain aspects of the federal program while implementing the state program. In addition, language has been added to allow the acid rain portion of the permit to be revised through procedures similar to those used for revising the Title V portion of the permit. Again, this will allow the executive director to implement a single program rather than both a federal and state revision process. For purposes of clarification, the deadlines for submitting acid rain permit applications have been included in §122.412. Except for the application deadlines, the requirements specifically listed in the original Subchapter E that are redundant with the requirements incorporated by reference have been deleted. EPA published proposed revisions to 40 CFR Parts 72 and 74 in the *Federal Register* on December 27, 1996. Since these proposed revisions are not expected to be promulgated before November 1997, any consequences from the revisions will be addressed in future rulemaking.

*Subchapter F: General Operating Permits.* The requirements for general operating permits have been consolidated in Subchapter F. General operating permits are permits for numerous similar sources which are developed through rulemaking consistent with the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002. Section 122.501 was added to clearly identify which procedural requirements the general operating permits will undergo at adoption. Consistent with 40 CFR 70, the adoption of general operating permits will be subject to public notice, affected state review, notice and comment hearings, EPA review, and public petition, as are all permits issued under 30 TAC 122. Because the public notice and notice and comment hearing requirements in Subchapter D are not appropriate for permits that apply to multiple sites, public notice and notice and comment hearing requirements specifically tailored for general operating permits have been included in §122.506 and §122.508.

Since representations in a general operating permit application become conditions under which the permit holder must operate, procedures for revising the application to address changes at a site have been included in §122.503. Section 122.504 has



also been added to specify the requirements for reapplying for a general operating permit that is revised. Both the procedures for changes at a site and changes in rules require the permit holder to establish provisional terms and conditions to ensure the general operating permits in conjunction with the applications are a current representation of the requirements at the site. Section 122.505 has been included to address procedures for renewing the authorizations to operate under a general operating permit. Further discussion of these requirements is provided in the response to comments.

**TAKINGS IMPACT ASSESSMENT.** The commission has prepared a takings impact assessment for the rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The commission was granted interim program approval in the June 25, 1996, issue of the *Federal Register* (61 FR 32693). Interim program approval provides the commission with the authority to implement the OPP in Texas for two years. On August 29, 1997, the EPA automatically extended all operating permits program interim approvals until October 1, 1998 (62 FR 45732). In addition, states may also request an addition extension (between 18 and 24 months) if they choose to combine corrections to their interim approvals with program revisions necessary to implement the revisions to Part 70 which are expected to be promulgated mid-summer of 1998. The commission intends on requesting the additional extension immediately after the Part 70 revisions are promulgated. Assuming no statutory changes are required by the Part 70 revisions, the commission would receive an additional 18-month extension after the date the Part 70 revisions are promulgated.

As a result of the extension, interim approval deficiencies do not have to be corrected until the commission submits its combined program submittal (addressing interim approval deficiencies and Part 70 revisions). However, the commission has attempted to correct the majority of deficiencies noted by EPA in the proposed rulemaking. In some cases, the commission has elected to wait until the combined program submittal to correct more difficult and complicated deficiencies. Specifically, the commission has decided to postpone determining how minor NSR will be codified in Chapter 122. Until that time, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue.

The purpose of this rulemaking is to address comments received from EPA, the regulated community, and public interest groups. The rules will achieve their stated purpose by addressing most of EPA's comments from the interim program approval notice and allowing options in permit application review and post permit processes. The rules will not be considered a burden on private real property because they are mandated by federal law.

**COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW.** The commission has determined that the this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP

goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The permits issued under 30 TAC 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions.

**HEARING AND COMMENTERS.** A public hearing regarding the proposed rules was held in Austin on June 12, 1997. No oral testimony was received at the hearing. The public comment period closed June 20, 1997. Six commenters submitted written comments on the proposal. One individual commenter opposed the proposal overall while the following five commenters suggested changes without directly stating their overall position on the proposal: the EPA; Central and South West Services, Inc. (CSWS); the Texas Chemical Council (TCC); the Sierra Club; and the Title V Planning Committee (TVPC), an organization comprised of a representative cross-section of the regulated community.

An individual requested that the entire proposal be withdrawn, revised, and submitted for public comment. The individual also requested that a series of public meetings be held on this issue.

The commission held a 30-day public comment period on the proposed rules during which one individual and one public interest group, in addition to three industry organizations and EPA submitted comments. On June 12, 1997, a public hearing announced in six major Texas newspapers, the *Texas Register*, and on the Internet, was held at which no testimony was presented. The commission understands that individuals and public interest groups may have limited resources for participating in the rulemaking process and greatly appreciates the time and effort these individuals and groups are able to contribute to the process; however, the commission does not believe that there is sufficient basis to warrant withdrawal of the proposal and additional public meetings. The EPA recently extended the deadline for submitting requests for full program approval to April of 1998 and indicated that an additional extension to October of 1999 may be granted; however, the extension does not allow states to postpone the permitting of full program sources and the 30 TAC 122 revisions include provisions providing the authority to permit these sources. Consequently, staff believes that it is important to move forward with revisions to 30 TAC 122 to address the interim program deficiencies to the extent possible at this time and to provide the authority to permit full program sources. In addition, the revisions will ensure that the permits issued under the extension are more consistent with the direction received from EPA in the proposed and final interim program approval notices. Therefore, the commission did not withdraw the proposal.

CSWS commented that it was unable to locate "Chapter 3 of this title," referred to in the introductory paragraph of §122.10.

30 TAC Chapter 3 is the chapter that contains definitions that apply agency-wide. The proposed rules did not involve changes to this chapter; therefore, it was not published along with the proposed revisions to Chapter 122. For information on accessing electronic or hard copies of commission rules, please contact the Texas Natural Resource Conservation Commission, Office of the Executive Director, Agency Communications Division, Publishing Section at (512) 239-0028. The commission rules are also available at libraries that maintain copies of the Texas Administrative Code or the *Texas Register*, from the Office of

the Secretary of State, or West Publishing Company, which publishes the Texas Administrative Code.

An individual commented that it was not clear in §122.10 that the definition of "air pollutant" was broad enough to encompass all of the air pollutants that may need to be regulated in the future.

The commission agrees that the definition should be broad enough to encompass air pollutants regulated in the future and believes that the proposed definition is sufficiently broad. Because the definition is based primarily on the types of rules a pollutant is subject to, when a new rule is established, any pollutant regulated under that rule automatically becomes an air pollutant as defined in this chapter. In addition, this definition is consistent with the federal definition of "regulated air pollutant" in 40 CFR 70. Therefore, no change has been made in response to this comment.

EPA commented that subparagraph (I) of the definition of Applicable requirement states that minor NSR requirements will not be incorporated into the operating permits until rulemaking is completed on the revised chapter for "new construction or modification" and EPA approves these revisions into the State Implementation Plan (SIP). EPA maintains that this condition must be deleted. Currently, EPA notes that the state has a minor new source pre-construction program, which EPA has approved into the SIP. Until EPA takes final action on any SIP revision submitted by the state, EPA maintains that the requirements of the current approved SIP are applicable requirements for Title V purposes. Thus, in order to gain full approval, EPA states that the final rulemaking must make clear that minor NSR requirements approved into the SIP are presently applicable requirements of operating permits and the OPP, and that SIP-approved minor NSR requirements must be incorporated as applicable requirements into operating permits at the time of permit issuance like any other SIP requirement.

As previously mentioned, EPA promulgated an extension of states' interim program approvals on August 29, 1997 (see 62 FR 45732). The extension automatically extends all operating permits program interim approvals until October 1, 1998. In addition, states may also request an additional extension (between 18 and 24 months) if they choose to combine corrections to their interim approvals with program revisions necessary to implement the revisions to Part 70 which are expected to be promulgated mid-summer of 1998. The commission intends to request the additional extension immediately after the Part 70 revisions are promulgated. Assuming no statutory changes are required by the Part 70 revisions, the commission would receive an additional 18-month extension after the date the Part 70 revisions are promulgated.

As a result of the extension, interim approval deficiencies do not have to be corrected until the commission submits its combined program submittal (addressing interim approval deficiencies and Part 70 revisions). However, the commission has attempted to correct the majority of deficiencies noted by EPA in the proposed rulemaking. In some cases, the commission has elected to wait until the combined program submittal to correct more difficult and complicated deficiencies. Specifically, the commission has decided to postpone determining how minor NSR will be codified in Chapter 122. Until that time, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue.

EPA also commented that in §122.10, subparagraph (J)(ii) of the definition of Applicable requirement should not exclude FCAA, §112(g) and (j).

Because FCAA, §112(g) and (j) are federal requirements that implement relevant requirements of the FCAA, the commission agrees that they should be applicable requirements under Chapter 122. The commission has made this change as requested.

EPA commented that there is no basis for designating requirements that have been promulgated by EPA but not adopted by and delegated to the state as federally enforceable only. EPA also stated that Texas was granted interim approval based on the representation that the state has adequate authority to issue permits and enforce all permit terms and conditions, including applicable requirements. EPA referenced 40 CFR 70 requirements that "the laws of the State...provide adequate authority to carry out all aspects of the program" and the state must have adequate legal authority to "assure compliance with each applicable requirement," and to "incorporate into permits all applicable requirements." For these reasons, EPA concluded that the "federally enforceable only" limitation must be deleted from 30 TAC 122.

The commission believes that EPA has created the need for this designation by retaining enforcement authority of the acid rain program and stratospheric ozone requirements. For example, the acid rain requirements must be codified in the operating permit; however, since EPA is not delegating enforcement of the acid rain program, those requirements must be identified as federally enforceable only. Furthermore, the commission does have broad statutory authority to enforce federal applicable requirements; however, the commission must complete rulemaking to adopt the specific regulatory authority upon which to base any enforcement action. The commission plans to adopt new federal rules such as the Maximum Available Control Technology (MACT) standards as soon as possible. It is the intent of the commission that before these requirements must be incorporated into any permit, state rulemaking will be completed and the designation will not be necessary. However, the designation will be necessary for those requirements for which EPA is not delegating enforcement authority. Compliance with federally enforceable only requirements will be assured, just as it is for any other applicable requirement, through the detailed codification in the permit of the monitoring, testing, recordkeeping, and reporting requirements contained in the federal rule. Compliance will be further assured through the codification of the recordkeeping, six-month monitoring reporting, deviation reporting, and compliance certification requirements of this chapter. The federally enforceable only designation in no way interferes with the executive director's ability to incorporate into permits all applicable requirements and the compliance assurance methods associated with those standards. For these reasons, the commission has not deleted the federally enforceable only designation.

The commission received several comments regarding the proposed state-only requirements. EPA commented that the requirements listed as state-only included requirements in the SIP, and those requirements would be considered applicable requirements and thus federally enforceable.

The commission has revised the rule to remove the rule citations from the definition of state-only requirement, except §§111.131-111.139. However, the commission has retained a

revised definition for state-only requirement, consistent with 40 CFR §70.6(b)(2), to accommodate any requirements that may qualify as state-only. Because there is no longer a need to specifically identify portions of the regulations as either applicable requirements or state-only requirements, the definition of Applicable requirement has been revised to reference the regulations generally and provide exceptions in subparagraph (K) for those requirements not within the scope of the OPP, such as requirements for mobile sources. In addition, the reference to 30 TAC Chapter 113 has been expanded to include the MACT standards the commission is currently in the process of adopting. 30 TAC Chapter 117, Subchapter D, addressing compliance dates, has also been included in the definition of Applicable requirement. The only requirements that are state-only at this time are those in §§111.131- 111.139 as specified in the proposed rule. The commission recently requested that EPA not incorporate §§111.131-111.139 into the SIP since they were not written to satisfy a federal requirement. EPA has concurred and will not take any further action to include these sections in the SIP.

TCC and TVPC both commented that they did not believe that it was appropriate for state-only requirements to be subject to Title V procedural requirements such as public notice, affected state review, notice and comment hearings, recordkeeping, and six-month monitoring reporting. In addition, CSWS requested clarification regarding which requirements apply to state-only requirements.

The commission agrees with the commenters and has specified in §122.143(20), consistent with 40 CFR 70, that any requirement designated as state-only will not be subject to any of the following requirements of 30 TAC 122: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring. Because state-only requirements are not subject to public notice, EPA review, etc., any changes regarding state-only requirements will be processed as administrative permit revisions, which are the only types of revisions that are not subject to these procedural requirements.

TCC and TVPC suggested revising subparagraph (B) of the definition of State-only requirement and subparagraph (G) of the definition of Applicable requirement to correct three flaws. First, they were concerned that these subparagraphs, which specified that any new requirement in Chapters 111, 112, 113, 115, 117, and 119 would be applicable requirements unless identified in rulemaking as state-only requirements, were written under the assumption that all requirements in those regulations would be either state-only or applicable requirements. The commenters pointed out that requirements such as §111.111(a)(5) and (6) relate to automobiles, locomotives, and ships and, therefore, are neither applicable requirements nor state-only requirements under the OPP. To address this concern, the commenters requested that the rule be revised to specify that new requirements would be applicable requirements only if designated as such in the new regulation.

The commenters also stated that the term "new" could create confusion in the future and recommended referring to the effective date of the rule instead. Finally, the commenters believed that the use of the word "rulemaking" was ambiguous because it could refer to either the rule or the preamble and requested it be replaced with the word "rule."

The commission agrees that the rule should clarify that requirements for mobile sources are not within the scope of the operating permits program. To address this concern, the commission has modified the exemption in the definition of Applicable requirement, subparagraph (K) such that it excludes requirements for mobile sources as well as state-only requirements. The commission also agrees that the suggested changes regarding the use of the word "new" and "rulemaking" provide additional clarity; however, due to other changes to the definition of Applicable requirement, the proposed subparagraph (G) is no longer necessary and has been deleted. Subparagraph (G) was proposed because the proposed definition of Applicable requirement referenced specific sections of 30 TAC 111 and 112 rather than the rules as a whole; consequently, any new sections adopted under those chapters would not have been included in the definition of Applicable requirement.

TCC and TVPC also requested that Chapter 117, Subchapter E be designated as a state-only requirement instead of an applicable requirement.

The commission believes that Chapter 117, Subchapter E contributes to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), and has determined to continue relying on it for demonstration of attainment and maintenance of the NAAQS; therefore, Subchapter E will not be designated as state-only.

An individual commented that in §122.10, the phrase "or by an inspector who has documented noncompliance" should be added to the definition of Deviation. The commenter was concerned that the definition did not specify that photographs or inspection reports may be used to document noncompliance.

The term "Deviation" identifies the type of an event that indicates that an emission limitation or standard may not have been met, not who can make the finding or how that finding can be documented. Documentation of the event would be based on the monitoring method required to be used, and would not preclude anyone from identifying a deviation based on at least the required monitoring method specified in the permit. Texas Health and Safety Code, §382.016(b) provides, in part, that, "[a] member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants." Therefore, the commission has made no change in response to this comment.

CSWS commented that in §122.10 the definition of Draft permit should be revised to include the review time period to be consistent with the other permit definitions.

The commission agrees that the length of the public comment period should be included in the definition of Draft permit for consistency, and has made this change.

Regarding the definitions in §122.10, the Sierra Club and an individual commenter stated that fugitive emissions should be considered in determining whether a source is major.

The commission agrees that in some cases fugitive emissions should be considered in determining whether a source is major. Fugitive emissions are required to be considered if the source belongs to one of the 27 source categories identified in the definition of Major source. This is consistent with EPA's approach for determining major source status for Title V as well as Prevention of Significant Deterioration and nonattainment.

Therefore, the commission has made no change in response to this comment.

An individual commenter disagreed with subparagraph (G) of the definition of Major source in §122.10. This subparagraph states that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units to determine whether the units or stations are major sources under FCAA, §112.

The commission understands the commenter's concern; however, not only is this language taken directly from 40 CFR 70, but it is also a statutory requirement established by the United States Congress in FCAA, §112(n). For this reason, the commission has made no change in response to this comment.

CSWS requested definitions in §122.10 for the terms "federal operating permit" and "general operating permit."

The commission has clarified that the definition of Permit also applies to Federal operating permit and provided a definition for General operating permit.

TCC and TVPC requested a definition in §122.10 for Reopen.

To be consistent with the definitions of Renewal and Revision, the commission has provided a definition for Reopening in response to this comment.

Again regarding the definitions in §122.10, the Sierra Club commented that when there are many similar facilities in close proximity, they should be considered a single source.

The commission agrees that many similar facilities in close proximity should generally be considered a single source when determining major source status. The definition of Major source is based on the definition of Site, which specifies that sites must be contiguous or adjacent and under common control to be considered a single source. These criteria were specified in 40 CFR 70; however, 40 CFR 70 requires that the sources also belong to the same major industrial grouping (i.e., two-digit Standard Industrial Classification (SIC) number) to be considered a single source. The §122.10 definition does not use this final qualifier and is therefore more inclusive than the federal requirement. The commission believes that the intent of this comment has already been accomplished and has made no change in response to this comment.

CSWS requested that the title of §122.120, "Who Shall Apply for a Permit," be changed to "Applicability" for consistency with other permit regulations.

The commission agrees with this recommendation and has changed the title as requested.

TCC and TVPC suggested language for §122.130(c)(1) to more clearly define when applications are due for sources that become subject to the requirements of this chapter after the effective date of the full or interim program.

The commission agrees that the suggested language is more clear; however, due to inconsistencies with other parts of the regulation, this language has been significantly revised. The language in the proposed rule required applications to be submitted within 12 months of the issuance of a preconstruction authorization. At the same time, §122.121 specified that no source subject to the requirements of this chapter could operate without a permit or an application shield. The commission believes that for the operating permit program, it is more

appropriate to base the application deadline on operation rather than preconstruction. The commission has revised the language to require owners and operators to submit applications before the source begins operation. This will eliminate the confusion regarding when applications are due for sources that are not yet operating or constructed within 12 months. Abbreviated applications may be used to meet this application deadline and the Operating Permits Division staff will work with NSR staff to ensure that owners and operators are aware of the operating permit application deadline before their preconstruction authorizations are issued.

TCC and TVPC recommended language regarding the phased application process in §122.131(a) to clarify that units in all the initial applications for the site would be considered in determining eligibility for the phased process.

The commission agrees that the recommended language more clearly reflects the intent of the commission and has made the change as requested.

TCC and TVPC had three concerns with the phased application requirements in §122.131(b). First, they were concerned that the reference to §122.132(e)(3) might be interpreted to require some portion of the detailed citations for every emission unit.

All the high-level applicability determinations (i.e., the rules the source is subject to) for all emission units will be included in the initial permit. The detailed citations within the rules, required by §122.132(b)(3), will be included for a portion of the emission units, and phased in for the remaining units, in accordance with a schedule in the permit. The commission has revised the language in §122.131(b) as requested in order to make the intent more clear.

TCC and TVPC also suggested that the discussion of the proposed phase-in schedule in §122.131(b) reference the citation requiring a proposed schedule in §122.132.

The commission believes that the requirement is clear without the reference to §122.132. In order to be consistent with regulatory reform and avoid unnecessary internal references, the commission has made no change in response to this comment.

Finally, TCC and TVPC requested that in §122.131(b) the statement "the initial permit application must include detail sufficient to clarify the applicant's obligations with respect to its applicable requirements..." be deleted or reworded to specify that the high-level applicability determinations under §122.132(e)(2) would be sufficient to clarify these obligations.

All general applicability determinations will be included in the initial application for all emission units; and the portion of the detail that is phased in will be determined by whether it is needed to clarify the applicant's obligations with respect to the applicable requirements. The commission believes that this criteria is necessary to assure EPA's approval of the phased process and, therefore, has not revised this language.

TCC and TVPC commented that the last part of the sentence in §122.131(d) which refers to the reporting period is inappropriate in the section on the phased application process.

The commission agrees that because there is no reporting required by the phased application process, this reference was inappropriate. This language has been deleted as requested.

TCC and TVPC commented that the requirement in §122.131(e) to incorporate all phased applicability determinations into the permit by permit renewal seems superfluous, since the rule also contains the requirement that the detail be incorporated in the permit by July 25, 2003; and it is not likely that permit renewal for a phased permit would ever occur before July 25, 2003.

The commission agrees that for full program sources, permit renewal will not occur before July 25, 2003. However, since permit renewal could occur before July 25, 2003, for interim program sources, some phased permits may be required to contain all detailed applicability determinations upon renewal. For this reason, and to assure EPA's approval of the phased process, the renewal deadline will be retained.

TCC and TVPC requested that in §122.132(a) the word "any" be removed from "any information" and "any applicable requirement" and the word "business" be added to read "confidential business information."

The commission does not believe that the removal of the word "any" from §122.132(a) would change the meaning of the subsection. In addition, this language was approved by EPA in 1996 for the interim operating permit program; therefore, the commission has not revised the rule in response to this comment. Regarding the second comment on §122.132(a), the commission has not added the word "business" to "confidential information" because this requirement is governed by Chapter 1, concerning Purpose of Rules, General Provisions, which addresses confidential information rather than confidential business information. However, the commission has included a reference to Chapter 1 in this subsection in order to direct readers to the requirements governing confidential information.

TCC and TVPC submitted comments regarding the provision for abbreviated applications in §122.132(c). Both commented that "at the discretion of the executive director" should be deleted from the provisions in §122.131(c) and §122.134(c) allowing abbreviated applications. The commenters mentioned that this would be consistent with their understanding that the staff was considering recommending that all sources submit abbreviated applications early for resource planning purposes.

The commission agrees that it is appropriate to delete "at the discretion of the executive director" from these citations. As discussed in the preamble to the proposed rule, staff has evaluated the required processing time for the interim program applications to determine whether the proposed application dates would provide the executive director sufficient time to meet the statutory requirement to issue one-third of the full program permits each of the first three years of the full program. The commission has revised §122.130(b) to require all full program sources to submit abbreviated applications by February 1, 1998, in order to allow for more thorough implementation planning and resource allocation for the full program. The February 1st deadline is also the date by which a source must establish any potential to emit limit which will be used to avoid the requirement to submit an application. The commission has specified in the rule that the remaining application information for sources belonging to the specified SIC major groups and sources applying for general operating permits will be required by July 25, 1998. For all other program sources, the remaining application information will be submitted upon request by the executive director. The executive director will provide a reasonable length of time for submitting this information.

TVPC also requested that the name "abbreviated application" be changed to "initial application."

The commission believes that the term "initial application" would be inappropriately associated with the term "initial permit" used throughout the regulation. To avoid this confusion, the commission will retain the term "abbreviated application."

In addition, TCC and TVPC both suggested language defining the content of the abbreviated application.

In response to this comment, the commission has specified in §122.132(c) that the abbreviated application will include at a minimum identifying information regarding the site and the applicant and a certification by a responsible official.

The Sierra Club and an individual commenter objected to the provisions in §122.132 and §122.134 allowing an abbreviated application. The individual commented that a list of all units subject to the program should be submitted initially. Both commenters were concerned that the abbreviated application would restrict the public's access to the information required by §122.132.

An abbreviated application will include general identifying information regarding the site and the applicant and a certification by a responsible official. Then, once staff begin reviewing the application, all the remaining information required by §122.132, including the identification of all emission units, will be requested and submitted. All the information required by §122.132 will be available to the public before and during the public comment period. In addition, the staff is currently exploring options for notifying the public through electronic means when the remaining information has been submitted. The commission has revised §122.130(b) to require all full program sources to submit abbreviated applications by February 1, 1998, in order to allow for more thorough implementation planning and resource allocation for the full program. Once the technical information is submitted, the applicant must update the application as necessary to keep it current. Consequently, if the commission did not provide for abbreviated applications, the applicant could be obligated to update the application several times before the application review even begins. To reduce unnecessary paper work and processing time, and to allow for planning and resource allocation, the commission will continue to provide for abbreviated applications.

EPA commented that it was not clear how fugitives were addressed in the permit and the permit application. EPA also stated that the permit application should contain enough information to determine major source status, and to verify the applicability of 40 CFR 70 or an applicable requirement. In addition, EPA stated that a general description of fugitive emissions not subject to any applicable requirement must be provided, as well as the quantification of fugitive emissions subject to an applicable requirement. However, EPA also specified that unless a source stipulates to the applicability of a requirement and/or its major status, the state must preserve its ability to require quantification of fugitive emissions as necessary to determine whether a particular requirement is applicable or whether a source is major for a particular pollutant.

Fugitive emissions will be addressed in the application and permit wherever they are required to determine applicability (§122.132(2) and (3)) or are necessary to codify an applicable requirement (§122.142(b)(2)). In response to EPA's comment regarding program applicability, the permit application is not the

appropriate place to verify major source status and applicability to 40 CFR 70, because those affirmative determinations have already been made when the application is submitted. The executive director verifies major source status through the authority in Chapter 101, concerning General Rules. This verification occurs outside of the application review process so that sources that may be subject to the program, but have not submitted applications can be identified. Regarding applicability of requirements, §122.132(a), (e)(2)(C), and (e)(3)(B) do require any information necessary to determine whether a particular requirement, including any fugitive requirement, is applicable. The executive director also has the authority to request any additional information necessary to evaluate or take final action on the application in §122.136(d). Finally, by the act of submitting an application, the owner or operator has acknowledged the source's major source status; therefore, as EPA has stated in its comment, quantification of fugitives for determining major source status is not necessary.

TCC and TVPC recommended that the application certification language in §122.132(e)(4)(A) be revised to be based on information and belief formed after reasonable inquiry to be consistent with the language in §122.165.

The commission agrees that two different certification statements are not necessary and has revised the rule to rely exclusively on the certification language in §122.165 for the entire application.

EPA stated that the compliance plan required with the initial application in §122.132(e)(4) must include a statement that the source will continue to comply with applicable requirements that become effective during the permit term, consistent with 40 CFR §70.5(c)(8).

The commission agrees to require the following statement in the application: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term." The commission believes that this statement of intent is appropriate, because the responsible official cannot rule out at the time of application all unforeseen and unavoidable circumstances that may result in noncompliance.

EPA commented that in §122.132(e)(4) the responsible official must certify to compliance, not apparent compliance, with the applicable requirements.

Based on this comment, the commission has deleted the word "apparent" from §122.132(e)(4) and (5) and §122.146(5).

EPA commented that the basis of the compliance certification in §122.132(e)(4)(B) cannot be limited to the compliance methods specified in the applicable requirements, and must be based upon consideration of "credible evidence" as well as any compliance method specified in the applicable requirements.

The commission agrees to allow compliance methods in addition to those established in the operating permit to be used to certify compliance. However, the commission believes that to adequately assure compliance with the applicable requirements and the permit, the certification must be based on, at a minimum, those compliance methods specified in the applicable requirement or the permit. Therefore, §122.132(e)(4)(B) and §122.146(3) have been modified to require that the certification be based on, at a minimum, any compliance method

specified in the applicable requirement or permit as appropriate. The qualifier "at a minimum" has also been included in the definition of Deviation for consistency.

EPA also commented that §122.132(e)(4)(C), noting the information required for sources having emission units not in apparent compliance, lacks two statements required by 40 CFR §70.5(c)(8)(iii): a statement that the source will continue to comply with applicable requirements which the source is complying with and a statement that the source will meet in a timely manner applicable requirements that become effective during the permit term. To be consistent with 40 CFR §70.5(c)(8)(iii), EPA stated that §122.132 must be revised to include this language.

As discussed previously, the commission has revised §122.132(e)(4) to include statements of intent regarding future compliance. These statements apply to all emission units in the application, including those out of compliance, and to avoid redundancy, they have not been repeated in §122.132(e)(4)(C).

TCC and TVPC commented that in §122.132(e)(8) it was not logical to require in the initial application any information requested by the executive director to determine whether to grant a permit shield. The commenters stated that at the time the initial application is submitted, the executive director will not have had the opportunity to request information regarding the permit shield and the applicant will therefore not know what to submit.

The initial application includes not only the information first submitted but also any information submitted in response to requests for information during the processing of the application. In addition, the director will provide clarification on the types of information that may be required for a permit shield in guidance documents. Consequently, no change to the rule language has been made in response to this comment.

The Sierra Club, an individual, and EPA objected to the requirement appearing throughout the rule (including §§122.132, 122.146, 122.210, 122.243, and 122.501) that information be submitted to EPA upon written request. The EPA requested that instead the rule require the information to be made accessible by electronic means; while the other two commenters requested that the information be automatically submitted to EPA.

This language was added to the rule because it was the executive director's understanding that EPA staff did not want to automatically receive this large volume of information. It is the intent of the executive director to provide EPA electronic access to application and permit information through the information management system. However, if the regulation specified electronic access, and the system failed, the regulatory requirement would be violated. Therefore, to address concerns that the information may not be readily available, the rule language has been revised to specify that the information "will be made accessible to the EPA" and the requirement for EPA to request the information in writing has been deleted.

The Sierra Club and an individual objected to the language in §122.134(a) specifying that an application is considered complete on the 61st day after receipt unless the executive director has notified the applicant of incompleteness.

This default completeness is required by 40 CFR §70.5(a)(2). Furthermore, the executive director always has the authority, under §122.136(d), to request additional information after the application has been deemed complete. The applicant is also obligated under §122.136(b) to correct the application no

later than 60 days after discovering any omissions or errors. Therefore, default completeness will not interfere with the executive director's ability to receive and evaluate information. For these reasons, the rule language has not been revised in response to this comment.

TCC and TVPC commented that the requirement in §122.136(c) to submit information addressing any additional requirements the site becomes subject to, should specify that the information be submitted within a certain time period, such as within 60 days. The commenters also suggested that rather than requiring updates whenever the site becomes subject to new requirements, the commission might consider requiring one complete update once the executive director is ready to begin the application review.

The commission agrees that it is appropriate to include a 60-day deadline for submitting this information and has revised §122.136(c) accordingly. In addition, the commission understands the concern that applicants should not be required to continually update an application before the executive director is prepared to begin the application review. The commission believes that this concern will be addressed by the abbreviated application. However, the commission has clarified in §122.136(c) that if only an abbreviated application has been submitted, information regarding any new applicable requirement is not required to be submitted before the remaining information is requested by the executive director.

An individual commented that the word "may" in the provision in §122.136(d) stating "...the executive director may request the information in writing..." should be changed to a shall.

The commission understands that the "may" in this provision could imply that in some cases the information, or the request, will be in writing and in some cases it will not. Because §122.132 and §122.165 require any application information to contain a certification by a responsible official, the transmitted information will always be in writing. Therefore, the commission believes that the commenter's concern has already been addressed. Because the "in writing" does not provide any additional authority and has created confusion, it has been deleted from this subsection.

EPA commented that the requirement in §122.142(c) that the permit contain periodic monitoring as required by the applicable requirements does not satisfy the periodic monitoring requirements of 40 CFR 70. EPA stated that periodic monitoring consistent with 40 CFR §70.6(a)(3)(B) must be included in the permit content requirements.

In response to this comment, §122.142 has been revised to provide the executive director the authority to implement periodic monitoring sufficient to assure compliance with the applicable requirements.

EPA commented that §122.143 does not state as a general term and condition of the permit that where an applicable requirement of the FCAA is more stringent than an applicable requirement under Title IV of the FCAA, both provisions are to be incorporated into the permit. EPA stated that to be consistent with 40 CFR 70, §122.143 must include this provision from 40 CFR §70.6(a)(1)(ii).

In response to this comment, the commission has included a provision consistent with 40 CFR §70.6(a)(1)(ii) in §122.142.

EPA stated that in §122.143, it is not clear whether site-specific SIP requirements issued under FCAA, Title I are required to be in the permit.

The commission acknowledges that this was an oversight and has, rather than revising §122.143, revised the definition of Applicable requirement to include site-specific SIPs.

TCC and TVPC requested clarification in §122.143(10) that the commission, rather than any permit holder, will incorporate new applicable requirements and new state-only requirements into general operating permits.

The commission agrees that the commission rather than the permit holder will initiate revisions to general operating permits and understands the commenters' concern with the identified rule language. However, the commission has also determined that the requirements in this paragraph are already addressed under permit revisions and are not necessary in this section. Therefore, consistent with the requirements in 40 CFR 70, this language has been deleted from §122.143 (concerning General Terms and Conditions).

EPA commented that the recordkeeping requirements in §122.144 must be expanded to include all monitoring information required by 40 CFR §70.6(a)(3)(C)(ii).

In response to this comment, the commission has revised the recordkeeping requirements in §122.144 to be consistent with 40 CFR §70.6(a)(3)(C)(ii).

TCC and TVPC commented that §122.144(3) should be revised to be consistent with §122.143(17), which allows information for general operating permits to be maintained at the location specified in the authorization to operate. Since the general operating permit is promulgated by rule, it cannot specify where records shall be kept for each applicant.

The commission agrees that the proposed language was inconsistent with §122.143(17) and has revised §122.144(3) accordingly.

EPA commented that §122.145 does not contain general permit terms as required by 40 CFR §70.6(a)(6)(i)-(iii). These 40 CFR 70 terms address the requirements that permits must include provisions stating that the permit holder must comply with all conditions of the permit, and provisions stating that the permit may be modified, revoked, reopened, and reissued, or terminated for cause.

Section 122.143(4) is a permit term which states that the permit holder shall comply with all terms and conditions of the permit and any provisional terms and conditions required to be included with the permit. Section 122.143(8) is a permit term stating that the permit may be revised, reopened for cause, or terminated. The commission has expanded §122.143(4) to include a statement consistent with 40 CFR §70.6(a)(6)(ii) that it shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit. Therefore, all the requirements of 40 CFR §70.6(a)(6)(i)-(iii) are reflected in the final rule.

EPA stated that §122.145 does not contain a permit condition prohibiting emissions exceeding any allowances that the source holds under FCAA, Title IV and §122.145 must be revised to include this provision.

In response to this comment, the commission has included the language consistent with 40 CFR §70.6(a)(4) in §122.143.

TCC and TVPC believed that §122.145(B) could potentially require duplicate reporting and requested the language be revised to specify that if the applicable requirement specifies monitoring reporting on a calendar quarter or semiannual basis, such reporting would satisfy the requirements of this chapter. CSWS also expressed concerns that the proposed rule required reporting redundant with reporting required by the federal acid rain program.

The commission agrees that redundant reporting should not be required, and has revised the language to more clearly state that, if an applicable requirement requires reporting on a different but more frequent basis, that reporting can be used to satisfy the requirements of this chapter.

CSWS requested that the deviation reporting requirements in §122.145 be revised to clarify that deviation reporting is not required for six-month periods in which no deviations occur.

The commission agrees that deviation reporting should not be required for periods during which there have been no deviations and has made this clarification. The commission points out that whether or not deviations have occurred, the annual compliance certification requires a positive statement relative to compliance for all emission units covered by the permit.

The EPA commented that it does not consider the reporting of deviations every six months to be prompt, as required by 40 CFR §70.6(a)(3)(iii)(B). EPA suggested that reporting of deviations within 24 to 48 hours would be more appropriate and stated that the rule must be revised to require a shorter time period for the prompt reporting of deviations.

40 CFR §70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. The commission has required the most significant deviations to be reported within 24 hours under the unauthorized emissions, upset or maintenance, start-up, and shutdown requirements of Chapter 101. Deviations must also be reported as required by any underlying requirement. The commission then requires those deviations of least significant concern to be reported at least every six months. These are only those deviations that do not meet the criteria to be reported within 24 hours and are not required to be reported more frequently by any underlying requirement. This approach involves three levels of deviation reporting based on the degree and type of deviation likely to occur and the applicable requirements. If the commission were to require every deviation, regardless of its significance, to be reported within 24 hours, it would be extremely difficult for staff to quickly identify serious instances where the executive director needs to take immediate action. In addition, through post-1990 NSPS, EPA itself has set a precedent for allowing some deviations to be reported within six months. Furthermore, because the six-month deviation report will include not only a description of all deviations reported on the six-month schedule but also a reference to any deviations submitted under Chapter 101, this report will be a comprehensive record of all deviations that occurred over the previous six months. Receiving the information in this consolidated manner will allow staff to easily identify problem trends that need to be addressed. This comprehensive list provides more relevant information regarding how well a source is complying with the applicable requirements than individual reports of each minor deviation would. For

these reasons, the commission will continue to require the most serious deviations to be reported within 24 hours and allow other deviations to be reported at a frequency consistent with the reporting requirements in the permit. In every case, deviations would be reported on at least a six-month, if not more frequent, schedule. The rule language has been revised in §122.145(3) to clarify that even if a deviation is exempt from being reported under Chapter 101, the six-month deviation reporting requirements in §122.145(2) still apply.

EPA commented that it was not clear whether the requirements in Chapter 101, referenced in §122.145(3), constitute an affirmative defense for noncompliance with the applicable requirements in the event of an emergency. EPA stated that the commission must clarify whether an affirmative defense may be used in the state. Furthermore EPA specified that should an affirmative defense exist, the allowance of time for notification is inconsistent with 40 CFR §70.6(g)(3), which requires notice to the permitting authority within two working days of an exceedance of emission limitations due to an emergency.

30 TAC 122 does not provide for an affirmative defense from noncompliance for sources. However, in §101.11, the recently adopted amendments to Chapter 101 (22 TexReg 7040, July 29, 1997) do provide, conditions for an exemption of unauthorized emissions from limits in permits, rules, and orders of the commission during upsets, maintenance, start-ups, and shutdowns. Qualification for an exemption is limited to those occurrences that meet certain requirements. Owners and operators must comply with §101.6 and §101.7, which requires correct reporting and recording of unauthorized emissions. Additionally, an exemption can only be obtained for upsets if the upset was reasonably unavoidable and appropriate corrective actions were taken as soon as practicable, and, for maintenance, start-up and shutdown, if emissions are minimized.

The commission believes that §§101.6, 101.7 and 101.11 provide sufficient relevant evidence to meet the requirements of §70.6(g). Additionally, the commission notes that §101.6(a) requires notification of upsets as soon as practicable, but not later than 24 hours after discovery; and §101.7 requires notification at least ten days prior to any maintenance, start-up, or shutdown expected to cause an unauthorized emission, but in any event as soon as practicable prior to the maintenance, start-up, or shutdown. Any maintenance, start-up, or shutdown activity that results in an unauthorized emission shall be considered a reportable upset and is subject to the requirements of §101.6. Finally, the commission notes that §101.11 requires the permit holder to identify the cause of the emergency, that the upset was not reasonably avoidable, the permittee take all reasonable steps to minimize emissions and report the upset (according to §101.6, which requires reporting as soon as practicable, but not later than 24 hours after discovery).

CSWS commented that reporting under §122.145(3) regarding upset, start-up, shutdown, or maintenance could be redundant with the deviation reporting required under paragraph (2) of the same section. To eliminate redundancy, CSWS suggested that the reporting requirements be combined.

Any potential redundancy has already been addressed in §122.145(2)(C) by the statement that if a deviation is reported under paragraph (3), the six-month deviation report need only include a reference to the previously submitted report. Therefore, no change has been made in response to this comment.



Regarding the reporting requirements in §122.145, the Sierra Club and an individual commented that upset reporting should be immediate and not delayed for 48 hours.

The requirements for upset reports are not established in this chapter and are therefore not within the scope of this rulemaking. The requirement for these types of reports are established in Chapter 101.

TCC and TVPC requested that annual compliance certification reports in §122.146(2) be due 60 days rather than 30 days from the end of the certification period.

Historically, 30 days have been allowed for reporting under the NSPS; therefore, the commission believes that 30 days is sufficient time for submitting these certifications. Regarding a related issue, the proposed rule allowed two weeks, rather than 30 days for the submittal of the annual permit revision applications. To make the deadlines for submitting reports, certifications, and applications consistent throughout the rule, the rule has been revised to allow 30 days from the end of the year to submit the annual permit revision application. The same change has been made in §122.131, regarding reopenings for the phased application process.

Also in §122.146, CSWS, TCC, and TVPC were concerned that information already available to the executive director in the operating permit would have to be reproduced in the annual compliance certification.

Because §122.146(5) states "[t]he annual compliance certification shall include or reference the following information:" the permit may simply be referenced to provided any information contained in the permit and that information need not be reproduced in the certification.

TCC and TVPC requested that the word "entire" be deleted from the reference in §122.146(5)(B) to the compliance certification period because it adds no value.

The commission agrees that the word "entire" adds no meaning to this requirement. Additionally, it is not consistent with other references in the regulation to the certification period; therefore, it has been deleted.

TCC and TVPC suggested that the requirement for the annual compliance certification in §122.146(5)(C)(v) be revised to clarify that reporting of deviations would be based on the monitoring frequency as well as the monitoring method required by the permit.

The commission believes that the term "monitoring method" encompasses the frequency of conducting the assessment and that citations related to method and frequency are found in the permit. Because of this, the commission has determined that no change is necessary. However, because the term "monitoring method" may not appear to be broad enough to encompass recordkeeping used to demonstrate compliance, the commission has specified that the certification may be based on recordkeeping where recordkeeping is used to satisfy the monitoring requirement.

EPA commented that the provisions in §122.146(5)(B) and (C) regarding the compliance certification do not adequately address the requirement in 40 CFR §70.6(c)(5)(iii)(B) that compliance certifications include the source's "compliance status" with respect to all applicable requirements. EPA also stated that these provisions do not meet the requirement in 40

CFR §70.6(c)(5)(iii)(C) that the compliance certification certify whether "compliance was continuous or intermittent."

As previously discussed, the word "apparent" has been deleted from the annual compliance certification requirement. In addition, §122.146(5)(B) has been revised to require the responsible official to state that units without deviations have been in continuous compliance; and §122.146(5)(C) has been revised to reference the potentially intermittent compliance status of those units that have had deviations.

EPA commented that §122.148 does not make it clear that the permit shield does not apply to provisions of FCAA, §303 (emergency orders), the liability of an owner or operator of a source for any violation of an applicable requirement prior to, or at the time of, permit issuance, requirements of the acid rain program, or the ability to obtain information from a source under FCAA, §114. EPA stated that the rule must be revised to be consistent with 40 CFR §70.6(f)(3).

In response to this comment, the commission has incorporated language consistent with §70.6(f)(3) into §122.148.

TCC and TVPC requested clarification regarding the language in §122.161(d) specifying when FCAA, §112(g) would apply. In particular the phrase "at the earliest time" and the reference to "sites" in the plural created confusion. The commenters asked if all interim program sites would be subject to §112(g) on January 25, 1997, the first interim program application deadline.

Because §112(g) will be implemented through Chapter 116, the commissions believes that date that these requirements will apply would be more appropriately address in Chapter 116 and has deleted this language from 30 TAC 122.

EPA submitted two comments regarding the proposed requirements for the responsible official in §122.165. The first comment was that the proposed rule allowed delegation of a duly authorized representative to too low a level in the corporate hierarchy. The second comment was that 40 CFR 70 does not allow the responsible official of a sole proprietorship, municipality, state, federal, or other public agency to delegate to a duly authorized representative.

In response to these comments, the commission has replaced the language in §122.165 defining responsible official and duly authorized representative with the 40 CFR 70 definition of "responsible official." The commission has also incorporated the proposed 40 CFR 70 revision to the definition allowing a responsible official who is not the designated representative to sign the Title V portion of the operating permit for affected sources.

TCC and TVPC requested confirmation that its interpretation that the definition of Responsible official in §122.165 was equivalent to the definition of Responsible official in 40 CFR §70.2 such that a person responsible for the overall operation of a facility which employs more than 250 persons or has gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars) is a responsible official.

Because the language has been revised to incorporate the definition of Responsible official from 40 CFR 70, this clarification is no longer necessary.

TCC and TVPC requested a change rewording §122.165(c)(2)(B), which specified the types of documentation that the higher level duly authorized representative must sign.

Because the commission has adopted the 40 CFR 70 definition of Responsible official, two levels of duly authorized representatives are no longer provided for and this language has been deleted.

An individual and the Sierra Club commented that multiple permits at a site, as provided in §122.201, should not be allowed. The individual also commented that it was his understanding, based on conversations with staff, that the purpose of the federal operating permit program was to have one permit for each site.

The purpose of the federal operating permits program is to provide a compliance and enforcement tool, which may be accomplished through a single permit at a site or multiple permits at a site. The commission regrets any misunderstanding the commenter may have developed based on discussions with staff. The provision in §122.201(e) is necessary to allow the executive director to break larger sites into more manageable parts to ensure a thorough application review and a more reasonable volume of information to be examined during public comment, EPA review, and public petition. The rule has been revised to clarify that the executive director has the authority to determine whether it is appropriate to have multiple permits at a site.

TCC and TVPC suggested clarifying in §122.210 that the permit revision process does not generally apply to general operating permits, since the commission rather than the permit holder initiates the permit revision process.

The commission agrees with this comment and has revised §122.210 to explicitly state that general operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of Subchapter C, but instead are subject to the requirements of Subchapter F.

TCC and TVPC commented that in the general requirements for permit revisions in §122.210(b) the use of the term "complete" is unnecessary and may create confusion.

Because the word "complete" has a specific meaning with respect to the application shield, and there is no application shield associated with a permit revision, the commission agrees that this language could be confusing. The commission has made the requested change in §§122.212, 122.216, and 122.220 as well as §122.210.

EPA commented that for the permit revision requirements in §§122.210-122.221 to be substantially equivalent to the revision process in 40 CFR 70, they must not provide for less state review, EPA or affected state review, or public participation than is provided in 40 CFR 70.

The commission agrees that the amount of review provided is the criteria for evaluating substantially equivalent under 40 CFR 70 and believes that for each of the three revision tracks, the final rule provides for equal or greater review by the executive director, EPA, affected states, and the public. Consistent with 40 CFR 70, administrative permit revisions under 30 TAC 122 are not subject to any procedural requirements such as public notice or EPA review. Minor permit revisions will be subject to an electronically announced 30-day public comment period, an affected state review, and a 45-day EPA review; while EPA's minor permit modification process involves only EPA review and affected state review. In addition, as is required by 40 CFR 70, significant permit revisions will undergo all the procedural requirements associated with initial issuance.

EPA commented that the provisions for administrative revisions in §§122.211-122.213 do not include a time period for the permitting authority to take action on complete applications, and §70.7(d)(3)(i) requires that the permitting authority take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request.

The commission has revised §122.213 to include a requirement for the executive director to take final action on an application for an administrative permit revision within 60 days of receipt.

EPA commented that the provision in §122.215(1) allowing a change that "adds a new permit term or condition" to be processed as a minor permit revision is written too broadly. EPA also stated that the criteria for minor permit revisions must be consistent with §70.7(e)(2)(i), which prohibits minor permit revisions from violating any applicable requirement or involving significant changes to existing monitoring, reporting, or recordkeeping requirements.

In 30 TAC 122 the types of changes that can be processed as minor permit revisions are limited by the types of changes that require significant permit revision. Any change listed in §122.219 shall be processed as a significant permit revision and is therefore excluded from the minor permit revision category. To address concerns regarding the scope of minor permit revisions, the commission has revised the list of changes that must be processed as significant permit revisions. Section 122.219 now specifies that any change that "is a significant change to existing monitoring, recordkeeping, reporting, or testing terms or conditions for an emission unit remaining in operation when the applicable requirement has not been revised or repealed through rulemaking" is a significant permit revision. Both §122.215 and §122.219 also include minor wording changes to more clearly define the types of revisions belonging to each category. For example, §122.219(11) was revised to use the term "modification" to be consistent with 40 CFR §70.7(e)(2)(i)(A)(5) for changes that are modifications under provisions of FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air quality or Plan Requirements for Nonattainment Areas). Regarding EPA's concern that the minor permit revision process could allow the permit holder to make changes that would violate an applicable requirement, the commission directs EPA to the permit revision procedures in §122.217(a)(1), which require the permit holder to comply with all applicable requirements. This paragraph also requires the permit holder to comply with the provisional terms and conditions, which by definition cannot authorize the violation of any applicable requirement, and must be consistent with and accurately incorporate all applicable requirements.

EPA also commented that §122.215(3) allowing a change that "affects or adds a requirement designed to limit potential to emit" to be processed as a minor permit revision conflicts with §70.7(e)(2)(i)(A)(4) and must be deleted.

In response, the commission has added any change that "affects or adds a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject" to the list of significant permit revisions. In addition, the language in §122.215(3) has been deleted as requested.

EPA commented that §122.215(5), which allows newly promulgated applicable requirements to be incorporated into the permit through minor revisions, is in conflict with §70.7(f)(1)(i), which

requires the permitting authority to reopen a permit to incorporate the new requirement if three or more years remain in the permit term.

Under §122.231, the commission is required to reopen a permit to incorporate a new applicable requirement and complete that reopening within 18 months of the promulgation of the requirement. However, because the permit holder is required to initiate a permit revision, within 12 months or less, to incorporate the new applicable requirement into the permit, the reopening should not be necessary. In most cases, this will be less than one year from the promulgation of the new requirement. In addition, the permit holder may not wait until permit renewal to incorporate a new requirement if less than three years remain in the permit term, as is provided for in 40 CFR 70. State-only requirements will be incorporated through the administrative permit revision process because they are not subject to the FCAA, Title V procedural requirements. In the final rule, the commission has specified that both applicable requirements and state-only requirements must be codified in provisional terms and conditions by the compliance dates of the new requirements. The provisional terms and conditions will be maintained with the permit in order to provide an accurate compliance and enforcement tool for both the permit holder and inspectors. Language has been added in §122.217 to make a distinction between requirements for permit revisions resulting from changes in applicable requirements or state-only requirements and those initiated by the permit holder. Subsection (a) refers to changes initiated by the permit holder while subsection (b) addresses rule changes. For rule changes in subsection (b), the permit holder will establish provisional terms and conditions that identify the new or revised requirement and the repealed applicable requirement by the compliance date of the new requirement or effective date of the repealed requirement. A notice containing this information shall be submitted no later than 45 days after the compliance date of the new requirement or the effective date of the repealed requirement, in order for the commission staff to utilize this information for deviation reports and compliance certifications. Also, this information will allow the public to have access to the full set of requirements at a site prior to the revision of the permit. Through the minor and administrative permit revision processes, the permit will include and assure compliance with new requirements more expeditiously than is provided for under the 40 CFR 70 reopening process. In addition, the minor permit revision process provides for a 30-day public comment period and a 45-day EPA review. The commission believes that this mechanism for incorporating new requirements into the permit is clearly substantially equivalent to the 40 CFR 70 requirements.

TCC and TVPC commented that the language in §122.217(a)(2) and elsewhere specifying that the notices regarding revisions be submitted "within two weeks of the end of the calendar month" would be more clear if it were revised to be "no later than two weeks after the end of the calendar month."

The commission agrees that the recommended language is clearer. However, because the revision process has been changed to require notification before a change is made, this language has been deleted.

EPA commented that §122.216(a) and §122.217(a)(2) suggest that a source may make a change before an application for a minor permit revision is submitted. EPA also commented that §70.7(e)(2) allows a source to make changes before issuance

of a minor permit modification, but only after the source files its minor permit modification application.

In response to this comment, the commission has revised §122.217 to require the permit holder to submit the notice to the executive director, containing all the information required in the minor permit application, before the change is operated. As a result of this change, there is no longer a need to define the reporting periods for submitting these notices, and the language throughout addressing reporting periods had been revised accordingly.

EPA also commented that the proposed minor permit revision procedures did not require a 45-day EPA review period consistent with §70.7(e)(2)(iv).

In response, the commission has revised the rule to require a 45-day EPA review period consistent with §70.7(e)(2)(iv). The EPA review period has replaced the requirement in §122.217 for a public petition period for minor permit revisions, which is not required by 40 CFR 70.

EPA stated that §122.217(e)(4) does not provide for timely notification of receipt of a permit revision application to EPA and affected states, and must be revised to be consistent with §70.7(e)(2)(iii).

Section 122.217 has been revised to require a 45-day EPA review and also requires an affected state review, as did the proposed rule. In addition, staff is working to provide EPA electronic access to all applications in a timely manner through the information management system.

EPA commented that the provisions in §122.217 allowing minor permit revisions to be incorporated into the permit on an annual basis are inconsistent with §70.7(e)(2)(iv), which requires the permitting authority to take action on the application within 90 days of receipt of the application, or 15 days after the end of EPA's 45-day review period, whichever is later.

To address this concern, the commission has revised §122.217 to require the executive director to take final action on minor permit revisions within 15 days of the end of EPA's 45-day review period or within 15 days of the resolution of any EPA objection.

EPA objected to the provisions allowing changes requiring a significant permit revision that could be considered a relaxation of permit terms and conditions, as identified in §122.219(1) to be made without prior approval. EPA was also concerned that §122.219(2) might allow the removal of an applicable requirement that should be codified in the permit.

In response, the commission has revised §122.221 to require prior approval for all significant permit revisions, including those identified in §122.219(1) and (2). Consequently, if a permit holder wishes to remove an emission limitation or standard when the basis of the determination at the site remains unchanged, the revision must undergo review by the executive director, the public, affected states, and EPA before the change can be operated.

EPA commented that the proposed regulations treated significant permit revisions in many respects in the same or similar fashion as minor permit revisions, but 40 CFR 70 requires significant permit modifications to meet all requirements of 40 CFR 70 as they apply to permit issuance and renewal.

The commission understands that EPA's concern was that some changes requiring significant permit revisions could be operated before the permit was revised and before review by the executive director, the public, affected states, and EPA. Section 122.221 has been revised to require prior approval for all significant permit revisions; therefore, review by the executive director, the public, affected states, and EPA must occur before any change requiring a significant permit revision can be operated.

Regarding reopening for cause, an individual requested that the term "material mistake" be defined in §122.231(a)(3). The commenter also requested an expansion of the criteria for reopening for cause to include "if citizens bring up needed changes."

The commission is concerned that if a definition of material mistake were provided and the commission did not anticipate all possible types of material mistakes, the scope of reopening for cause could be inadvertently limited. The commission agrees that a citizen may raise an issue resulting in a reopening; however, the commission believes that when this happens, the issue will fall into one of the listed categories. For example, when a citizen requests a change, it may be based on the fact that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit. The citizen comment could also initiate an evaluation of the permit resulting in a determination by the executive director that the permit does not assure compliance with the applicable requirements. The definition of reopening for cause is consistent with the requirements 40 CFR 70 and the commission has made no change in response to the comment.

EPA commented that §122.231(d) does not require that the proposed notice regarding reopenings be forwarded to EPA for review as in §70.7(g)(3).

The commission agrees that the procedures for reopenings in the proposed rule were not consistent with the requirements of 40 CFR §70.7(g) and has revised §122.231 to more closely reflect the federal requirements. The federal rule specifies that if EPA notifies the permitting authority that cause exists to reopen a permit, the permitting authority must submit a proposed determination regarding the reopening to EPA within 90 days. The federal rule also specifies that EPA will have 90 days to review the determination and if EPA objects to the determination, the permitting authority will have 90 days to resolve the objection and take final action on the permit. The commission has revised the permit reopening provisions to include the 90-day deadline for submitting the notice, the 90-day EPA review period, and the subsequent 90 days for the permitting authority to take final action on the permit.

An individual opposed minor permit revisions being announced only on electronic media and suggested that the notice be printed bilingually in a large, regional circulation newspaper instead. The Sierra Club preferred that the notice be provided bilingually in a major newspaper of the relevant areas and in the electronic media.

Neither the previous version of this rule, which became effective in 1993, nor 40 CFR 70 provided for newspaper notice for minor permit revisions. Even so, the proposed 30 TAC 122 goes beyond the requirements of 40 CFR 70 to provide for public notice in the electronic media. The purpose of the operating permit is to codify the applicable requirements of the site. To issue a permit, a great deal of information must be submitted

to the executive director. Given the volume of information, it is a practical and effective use of resources to hold this information electronically. Due to the nature of minor permit revisions and the high cost of newspaper notice, which could be thousands of dollars per notice, the commission determined that the goal of providing sufficient and timely opportunities for public participation would best be met through the electronic notice. Texas Health and Safety Code, Texas Clean Air Act, §382.056, governs the requirements for bilingual newspaper and sign notices; however, electronic notices are not required to meet these requirements. Therefore, the electronic notice meets the requirements of the Texas Clean Air Act. The electronic notice will be posted for a set amount of time in the same electronic location during the public notice period. However, the newspaper would only be printed once. By utilizing the electronic notice, the commission can provide more information in a more timely manner and for a longer period of time. The staff is exploring options to provide the public access to the Title V permitting information. The commission also intends to provide the public access to Title V permitting information at the regional offices.

An individual opposed that a single notice is required to be published for the operating permit, whereas two notices are published for an NSR permit.

The federal OPP serves a significantly different, yet complementary, function to that of the NSR program. The NSR program is designed to review applications to build or modify a facility. The purpose of that review is to ensure that appropriate control technology will be used at the facility and that proposed emissions will not adversely affect the health or safety of any citizen. The purpose of the operating permit is to codify the applicable requirements of the site. The applicable requirements that are codified by the operating permit are federal rules and state regulations. During the rulemaking process, the applicable requirements (federal rules and state regulations) undergo public notice. During the operating permit public notice, the applicable requirements will be subject to an additional public notice. The emissions from a site may not be increased or decreased due to an operating permit.

40 CFR 70 does not require more than one newspaper notice for operating permits and does not require sign posting. Nor does the Texas Health and Safety Code, Texas Clean Air Act, §382.056, require more than one newspaper notice. Therefore, both the NSR program and the federal OPP satisfy the state and federal requirements for public notice. For these reasons, the commission has made no change in response to this comment.

An individual requested that "any person who may be affected by emissions" be defined.

Requests will require a review on a case-by-case basis in order to determine who is affected by emissions. In order to be granted, the request must also meet the requirements of the Texas Health and Safety Code, §382.0561(c). Any further definition of affected person would still have to allow for case-by-case determination of the relevant factors. Therefore, the commission has not defined affected person in the final rule.

An individual requested that the term "reasonable specificity," used in §122.360(f) be defined.

Section 122.360 is intended to provide the petitioners with the ability to petition EPA if EPA fails to object to the issuance of an operating permit. To prevent the exclusion of some valid

petitions, the commission has determined not to define the term "reasonable specificity," which will provide flexibility for petitioners seeking to have a petition granted. Therefore, no change has been made in response to this comment.

An individual requested clarification of §122.360(h), regarding when construction of a facility may begin in the event an objection is received.

The site may begin construction after receiving the appropriate preconstruction authorization in accordance with Chapter 116. The federal operating permit is the authorization for the site to operate. These two programs serve two significantly different, yet complementary, functions. The intent of §122.360(h), which corresponds to §70.8(d), provides that if EPA has objected due to a public petition and the permit has been issued, the permit remains effective. As long as the site has an effective permit, the site has the authorization to operate. The executive director or his designee shall have 90 days from the receipt of any EPA objection to resolve any EPA objection and, if necessary, terminate or revise the permit.

EPA requested that §122.412(1)(E) be revised to clarify the acid rain application deadlines. The revision EPA recommended would involve removing the language "...meets the subject acid rain program requirements defined in §72.30(b)(2)(v)-(viii)" and replacing this language with "fails to meet the requirements of §72.6(b)(5) or §72.6(b)(6)." The recommendation also included adding a subparagraph (F) to reference the remaining units.

The commission agrees with this comment and has made those changes as requested.

EPA commented that the final rule should require that nitrogen oxides (NO<sub>x</sub>) early election units submit Phase II NO<sub>x</sub> compliance plans by January 1, 1998.

The commission agrees to make the requested change to be consistent with 40 CFR 72. Section 122.412(2) has been revised to eliminate the exception for early election units.

TCC and TVPC commented that it is unclear how §122.211(2) and (4) apply to general operating permits.

The commission agrees that this type of change could not apply to a general operating permit. To revise a general operating permit, the commission would have to complete rulemaking. If administrative information changed at the site, the application must be updated appropriately by the permit holder. Additional rule language was added to §122.503(a) to address this type of change.

TCC and TVPC suggested that §122.503(a)(2)(B) be revised to require information to be submitted annually instead of within two weeks of the end of the month in which the change took place.

An annual update would not allow the commission to maintain an accurate and complete application for the inspector or the public. The commission determined that the suggested change would not be consistent with 40 CFR 70. Therefore, the proposed rule language has been retained.

TCC and TVPC recommended that §122.503(a)(2)(C) be revised to refer to the revision of the authorization to operate and not the application.

The commission agrees with the recommended language and the change was made throughout the final rule where appropriate.

TCC and TVPC commented that the references to §122.133 and §122.134 in §122.504(b) were circular.

The commission agrees and has deleted the circular reference.

TCC and TVPC commented that the reference to §122.133 in §122.505(d) was circular.

The commission recognizes that the citation referenced is circular. The commission determined that the "timely and complete" requirement in §122.505(d) is provided for in §122.505(e), so the language was removed.

TCC and TVPC commented that the proposed regulation was silent regarding the procedures regarding the repeal of a general operating permit. The commenters were concerned that permit holders might be required to apply for another permit within 20 days of the repeal of a general operating permit. The commenters stated that this would be an unreasonable burden on the applicant.

The proposed §122.504(e) stated that "[i]f a permit holder's authority to operate under a general operating permit is affected by the amendment or repeal of a general operating permit and the permit holder no longer qualifies for the general operating permit or no longer intends to operate under the general operating permit, the permit holder must apply for another operating permit." The commission understands the commenters' concerns that the proposed language was silent to the deadline to apply for another operating permit. The final rule language, §122.504, states that the permit holder must apply for a permit by the effective date of the rulemaking. There will be a two-month delay between adoption and the effective date of the general operating rulemaking to allow for application preparation. Therefore, the regulated community should always have a reasonable amount of time to apply for a permit.

In addition, the language has been revised to specify that applications to operate under revised general operating permits must also be submitted by the effective date of the revised general operating permit. Again, the effective date of the revised general operating permit will be two months after the date of adoption. Furthermore, because the general operating permit rulemaking will occur after rulemaking on the underlying requirement, the permit holder will be aware of the need to revise the general operating permit application well in advance of the application deadline. Rule language has also been added to address potential conflicts between the general operating permits and new or revised underlying applicable requirements that may exist before the general operating permits can be updated to reflect the new requirements. The permit holder will establish provisional terms and conditions that identify the new or revised requirements and any repealed requirements by the compliance date of the new requirement. This information will be maintained with the permit in order to provide an accurate compliance and enforcement tool for both the permit holder and inspectors. A notice containing the provisional terms and conditions will be submitted no later than 45 days after the compliance date or effective date in order for the commission staff to utilize this information for deviation reports and compliance certifications. Also, this information will allow the public to have access to the full set of requirements at a site prior to the revision of the GOP. Any updates to the information submitted will be included with the application for the revised general operating permit.

EPA commented that §§122.501-122.508 should be changed to require renewal of the general operating permit every five years.

In response to the comment, the change was made appropriately throughout the final rule.

An individual requested that the commission develop a list of any interested persons to receive notice individually of any proposed general operating permits, regulation changes, or any other rulemaking.

As stated in §122.506(a), before the adoption of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the proposed draft general operating permit rule. The opportunity for public comment will be published in the *Texas Register*, regional newspapers throughout the state, and on the Internet. Currently, the commission also provides a list of rulemaking hearings on the Internet. Due to the nature of the operating permit program, a great deal of information must be submitted to the executive director. Given the volume of information, it is a practical and effective use of resources to provide this information electronically. The staff is exploring options to provide the public access to the Title V permitting information. The commission also intends to provide the public access to Title V permitting information at the regional offices.

An individual requested that the terms "reasonable limits," "reasonable ascertainable issues," and "all reasonable available arguments" be defined.

The commission believes that the phrases "reasonable limits," "reasonable ascertainable issues," and "all reasonable available arguments" are intended to mean just what they say and are intended to provide flexibility.

The individual commenter expressed concern that commission staff would "cut off public statements and require that only written statement be taken." The commenter also stated that there was not enough time after the hearing to submit written comments concerning new information or information stated at the hearing. The commenter specifically objected to the language in §122.508(c).

The commission is required to hold public hearings for operating permits, and must conduct hearings in accordance with the Texas Clean Air Act, which authorizes the commission to delegate hearing powers to staff. It is commission policy to allow reasonable time for public statement, and to allow hearing officers to determine when additional time is necessary for submittal of written statements on a case-by-case basis. Section 122.340(g) provides that the period for submitting written comments may be extended beyond the close of the hearing. The commission has determined that these case-by-case determinations allow for input by the public and efficient processing of permits where there is little or no public comment. Therefore, the commission has made no changes in response to this comment.

Several typographical errors were noted by the commenters. The typographical errors were noted in these sections: §§122.10 (K) and (G); 122.136(b); 122.210(a); 122.217(d)(2); 122.132(e)(5); 122.320(g)(1)(B), (C), and (E); and 122.505(b)(3). The typographical errors have been corrected in the final rules.

## Subchapter A. Definitions

### 30 TAC §§122.10–122.12

STATUTORY AUTHORITY. The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees; §382.061, which provides for appeal of federal operating permits; §382.064, which provides for initial application dates for federal operating permits; §382.085, which prohibits unauthorized emissions; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713887

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966

## Subchapter B. Permit Requirements

## Applicability

### 30 TAC §122.120

The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees; §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Permit Application

### 30 TAC §§122.130, 122.132-122.136, 122.138, 122.139

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**Permit Content**

**30 TAC §§122.141, 122.143, 122.145**

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

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◆ ◆ ◆  
**Public Notification and Comment Procedures**

**30 TAC §§122.150, 122.152-122.155**

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Miscellaneous

### 30 TAC §§122.161, 122.163-122.165

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This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

## Subchapter C. Permits Issuances, Revisions, Reopenings, and Renewals

### Permit Issuance

#### 30 TAC §§122.201, 122.202, 122.204

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts,

§5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Permit Revisions

### 30 TAC §§122.210-122.213, 122.215-122.217, 122.219-122.221

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information;

and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Permit Reopenings

### 30 TAC §122.231, §122.233

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116,

which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Permit Renewals

### 30 TAC §122.241, §122.243

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§5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Subchapter D. Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition

### 30 TAC §§122.310-122.312, 122.314

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initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Subchapter E. Acid Rain

### General Acid Rain Permits Requirements

#### 30 TAC §122.410, §122.411

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vide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Acid Rain Application

#### 30 TAC §§122.420-122.422, 122.425, 122.427

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ministrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Acid Rain Permit Issuance, Revocations, and Re-openings

### 30 TAC §§122.430, 122.432, 122.434, 122.435, 122.437, 122.438

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which pro-

vides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

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## Acid Rain Appeals

### 30 TAC §122.440

The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of

delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Subchapter A. Definitions

### 30 TAC §122.10, §122.12

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; adminis-

tration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### §122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Air pollutant-Any of the following regulated air pollutants:

- (A) nitrogen oxides;
- (B) volatile organic compounds;

(C) any pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated;

(D) any pollutant that is subject to any standard promulgated under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the EPA by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (relating to Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (relating to Hazardous Air Pollutants) or other requirements established under §112, including §112(g) and (j). However, a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r).

(2) Applicable requirement-

(A) All of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site.

(B) All of the requirements of Chapter 112 of this title (relating to Sulfur Compounds) as they apply to the emission units at a site.

(C) All of the requirements of Chapter 113 of this title (relating to Control of Air Pollution from Toxic Materials), as they apply to the emission units at a site.

(D) All of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site.

(E) All of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site.

(F) All of the requirements of Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide) as they apply to the emission units at a site.

(G) Any site specific requirement of the state implementation plan (SIP).

(H) Any term or condition of any preconstruction permits issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

(I) All of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112 (relating to Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain Program;

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (relating to Monitoring and Analysis or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (relating to Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (relating to Federal Ozone Measures);

(vii) any standard or other requirement under FCAA, §183(f) (relating to Tank Vessel Standards);

(viii) any standard or other requirement under FCAA, §328 (relating to Air Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (relating to Stratospheric Ozone Protection), unless EPA has determined that the requirement need not be contained in a permit; and

(x) any increment or visibility requirement under FCAA, Title I, Part C or any NAAQS, but only as it would apply to temporary sources permitted under FCAA, §504(e) (relating to Temporary Sources).

(J) State and federal ambient air quality standards, net ground level concentration limits, ambient atmospheric concentration limits, requirements for mobile sources, and state-only requirements (including §§111.131 of this title (relating to Definitions), 111.133 of this title (relating to Testing Requirements), 111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), 111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and 111.139 of this title (relating to Exemptions)) are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph.

(K) Any requirements noted in this definition which have been promulgated by the EPA, but have not been adopted by and delegated to the commission are federally enforceable only. These applicable requirements will be designated as federally enforceable only in the permit.

(3) Deviation-Any indication of noncompliance with a term or condition of the permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit.

(4) Draft permit-The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review.

(5) Emission unit-The smallest discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

(6) Final action-Issuance or denial of the permit by the executive director.

(7) General operating permit-A permit by rule issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple stationary sources may be authorized to operate.

(8) Major source-

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under FCAA, §112(b) (relating to Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the EPA through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" shall have the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

- (i) coal cleaning plants (with thermal dryers);
- (ii) kraft pulp mills;
- (iii) portland cement plants;
- (iv) primary zinc smelters;
- (v) iron and steel mills;
- (vi) primary aluminum ore reduction plants;
- (vii) primary copper smelters;
- (viii) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) hydrofluoric, sulfuric, or nitric acid plants;
- (x) petroleum refineries;
- (xi) lime plants;
- (xii) phosphate rock processing plants;
- (xiii) coke oven batteries;
- (xiv) sulfur recovery plants;
- (xv) carbon black plants (furnace process);
- (xvi) primary lead smelters;
- (xvii) fuel conversion plant;
- (xviii) sintering plants;
- (xix) secondary metal production plants;
- (xx) chemical process plants;
- (xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;
- (xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) taconite ore processing plants;
- (xiv) glass fiber processing plants;
- (xxv) charcoal production plants;
- (xxvi) fossil-fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or
- (xxvii) any stationary source category regulated under FCAA, §111 (relating to Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (relating to Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (relating to  $\text{NO}_x$  Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (relating to Plan Requirements for Nonattainment Areas), including the following:

- (i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or oxides of nitrogen ( $\text{NO}_x$ ) in any ozone nonattainment area classified as "marginal or moderate";

- (ii) any site with the potential to emit 50 tpy or more of VOC or  $\text{NO}_x$  in any ozone nonattainment area classified as "serious";

- (iii) any site with the potential to emit 25 tpy or more of VOC or  $\text{NO}_x$  in any ozone nonattainment area classified as "severe";

- (iv) any site with the potential to emit ten tpy or more of VOC or  $\text{NO}_x$  in any ozone nonattainment area classified as "extreme";

- (v) any site with the potential to emit 100 tpy or more of carbon monoxide in any carbon monoxide nonattainment area classified as "moderate";

- (vi) any site with the potential to emit 50 tpy or more of carbon monoxide in any carbon monoxide nonattainment area classified as "serious";

- (vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as "moderate";

- (viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as "serious"; and

- (ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(9) Notice and comment hearing-Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(10) Permit or federal operating permit-

- (A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

- (B) any general operating permit, or group of general operating permits, adopted by the commission under this chapter.

(11) Permit application-An application for an initial permit, permit revision, permit renewal, permit reopening, general operating permit, or any other similar application as may be required.

(12) Permit holder-A person who has been issued a permit or granted the authority by the executive director to operate under a general operating permit.

(13) Permit revision-Any administrative permit revision, minor permit revision, or significant permit revision that meets the



related requirements of Subchapter C of this chapter (relating to Permits Issuances, Revisions, Reopenings, and Renewals).

(14) Potential to emit-The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

(15) Preconstruction authorization-Any authorization to construct or modify an existing facility or facilities under Chapter 116 of this title. In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under FCAA, §112(g) (relating to Modifications) after delegation of §112(g) to the commission;

(B) any requirement established under FCAA, §112(j) (relating to Equivalent Emission Limitation by Permit) after delegation of §112(j) to the commission; and

(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

(16) Proposed permit-The version of a permit that the executive director forwards to the EPA for a 45-day review period.

(17) Provisional terms and conditions-Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director under Subchapter C or Subchapter F of this chapter.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph; and

(iii) where applicable, the specific regulatory citations identifying any repealed requirements.

(18) Renewal-The process by which a permit or an authorization to operate under a general operating permit is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(19) Reopening-The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(20) Site-The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). If a research and development operation does not produce products for commercial sale, it shall be treated as a separate site from any manufacturing facility with which it is collocated.

(21) State-only requirement-Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement.

(22) Stationary source-Any building, structure, facility, or installation that emits or may emit any air pollutant.

#### *§122.12. Acid Rain Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acid rain permit-The legally binding and segregable portion of the federal operating permit issued under this chapter, including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(2) Acid rain program-The national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with FCAA, Title IV, contained in 40 CFR 72, 73, 74, 75, 76, 77, and 78.

(3) Designated representative-The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the acid rain program, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with acid rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the acid rain program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713902

Kevin McCalla

Director, Legal Division



## Subchapter B. Permit Requirements

### General Requirements

#### 30 TAC §§122.110, 122.120, 122.121

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### *§122.110. Delegation of Authority to Executive Director.*

(a) The executive director may take action on any permit on behalf of the commission.

(b) The executive director may delegate authority, by memorandum, to the director of the Operating Permits Division to take action on any permit on behalf of the commission; but may not delegate authority to other agency personnel.

#### *§122.120. Applicability.*

Owners and operators of one or more of the following are subject to the requirements of this chapter:

(1) any site that is a major source as defined in §122.10 of this title (relating to General Definitions);

(2) any site with an affected unit as defined in 40 CFR 72 subject to the requirements of the Acid Rain Program;

(3) any solid waste incineration unit required to obtain a permit under FCAA, §129(e) (relating to Solid Waste Combustion); or

(4) any site that is a non-major source which the EPA, through rulemaking, has designated as no longer exempt from the obligation to obtain a permit. For the purposes of this chapter, those sources may be any of the following:

(A) any non-major source so designated by the EPA, and subject to a standard, limitation, or other requirement under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(B) any non-major source so designated by the EPA, and subject to a standard or other requirement under FCAA, §112 (relating to Hazardous Air Pollutants), except for FCAA, §112(r) (relating to Prevention of Accidental Releases); or

(C) any non-major source in a source category designated by the EPA.

#### *§122.121. Prohibition on Operation.*

Except as provided in §122.138 of this title (relating to Application Shield), owners and operators of sites identified in §122.120 of this title (relating to Applicability) shall not operate emission units at those sites without a permit issued or granted under this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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## Permit Application

#### 30 TAC §§122.130-122.134, 122.136, 122.138-122.140

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing pow-

ers; notice of hearings; and appeal of commission actions; §§382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

*§122.130. Initial Application Due Dates.*

(a) Interim operating permit program.

(1) Owners and operators of the following sites shall submit initial applications under the interim operating permit program:

(A) any site with an affected unit subject to the requirements of the Acid Rain Program;

(B) any site with the following primary Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) (for purposes of this subparagraph, each site shall have only one primary SIC code):

- (i) Petroleum and Natural Gas, 1311;
- (ii) Natural Gas Liquids, 1321;
- (iii) Electric Services, 4911;
- (iv) Natural Gas Transmission, 4922;
- (v) Natural Gas Transmission and Distribution, 4923; or
- (vi) Petroleum Bulk Stations and Terminals, 5171.

(2) Except as provided in paragraph (3) of this subsection, applications for sites subject to the interim operating permit program shall be submitted by January 25, 1997.

(3) If an owner or operator has more than one site listed in paragraph (1)(B) of this subsection, the owner or operator shall submit initial permit applications for no less than 10% of those sites by January 25, 1997. Applications for the remaining sites shall be submitted by July 25, 1997. This paragraph does not apply to any site with an affected source.

(b) Full operating permit program.

(1) Owners and operators of any site subject to the requirements of this chapter on February 1, 1998, except those identified in subsection (a) of this section, shall submit abbreviated initial applications by February 1, 1998.

(2) The remaining application information for any site for which the applicant is applying for a general operating permit and for sites with the following primary SIC major groups shall be submitted by July 25, 1998 (for purposes of this section, each site shall have only one primary SIC code):

- (A) Mining and Quarrying of Nonmetallic Mineral, Except Fuels, 14;
- (B) Food and Kindred Products, 20;
- (C) Lumber and Wood Products, Except Furniture, 24;
- (D) Rubber and Miscellaneous Plastics Products, 30;
- (E) Stone, Clay, Glass, and Concrete Products, 32;
- (F) Fabricated Metal Products, Except Machinery and Transportation Equipment, 34;
- (G) Motor Freight Transportation and Warehousing, 42; and
- (H) Automotive Repair, Services, and Parking, 75.

(3) Except as specified in paragraph (2) of this subsection, the executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(c) After the effective date of the interim or full operating permit program. Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the interim or full program after the applicable application due dates identified in subsection (a) or (b) of this section, are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the EPA, the owner or operator will submit an application no later than 12 months after the action that subjects the site to the requirements of this chapter.

(d) Applications submitted under 40 CFR 71 (relating to Federal Operating Permit Programs).

(1) If 40 CFR 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

*§122.131. Phased Application Process for Initial Applications.*

(a) Sites with 75 or more emission units in a nonattainment area, and sites with 150 or more emission units in an attainment area may qualify for the phased application process. Eligibility for the phased application process shall be based on the number of emission units individually listed in all the initial permit applications for the site.

(b) Applicants with sites that qualify for the phased application process may submit in the initial permit application detailed applicability determination information required by §122.132(e)(3) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) for a portion of the emission units with a proposed schedule for the submission of the remaining detailed applicability determination information. For each emission unit, the initial permit application must include detail sufficient to clarify the applicant's obligations with respect to its applicable requirements, including emission limits and compliance terms.

(c) Any detailed applicability determination information not submitted with the initial permit application shall be submitted according to the schedule included as a term or condition of the permit.

(d) The schedule in the permit must require the incorporation of the remaining detailed applicability determinations into the permit at least annually through the reopening or renewal process. The applications for permit reopenings shall be submitted no later than 30 days after the end of each 12-month period after initial issuance.

(e) All detailed applicability determinations shall be codified in the permit no later than July 25, 2003, or during the first permit renewal, whichever occurs first.

(f) The reopening requirements of this section may be satisfied by the procedures for significant permit revisions or permit renewals.

*§122.132. Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits.*

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

(d) An application for a site qualifying under §122.131 of this title (relating to Phased Application Process for Initial Applications) may be submitted under the phased application process.

(e) An application shall include, but is not limited to, the following information:

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., NSPS Kb);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

(C) the basis for each determination made under subparagraph (B) of this paragraph;

(3) for each emission unit, except as provided in §122.131 of this title, information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;

(B) the basis for each applicability determination identified under subparagraph (A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on, at a minimum, any compliance method specified in the applicable requirements;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with FCAA, §112(r)(7) (relating to Prevention of Accidental Releases);

(7) for applicants electing the phased application process under §122.131 of this title, a proposed schedule for the incorporation of the remaining detailed applicability determinations into the permit;

(8) for applicants requesting a permit shield, any information requested by the executive director in order to determine whether to grant the shield; and

(9) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(f) The executive director shall make a copy of the permit application accessible to the EPA.

#### *§122.133. Timely Application.*

A timely application for a permit is one that is submitted as follows:

(1) for initial permit issuance, in accordance with §122.130 of this title (relating to Initial Application Due Dates);

(2) for a permit renewal, at least six months, but no earlier than 18 months, before the date of permit expiration;

(3) for the initial authorization to operate under the general operating permit, in accordance with §122.130 of this title;

(4) for a renewal of an authorization to operate under a general operating permit, at least six months, but no earlier than 18 months, before the date of expiration of the authorization; and

(5) for the authorization to operate under a revised general operating permit, by the effective date of the revised general operating permit.

#### *§122.134. Complete Application.*

(a) An application is complete on the 61st day after receipt by the executive director, unless the executive director has requested additional information or otherwise notified the applicant of incompleteness.

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

(1) for initial permit issuance, all information required in §122.132 of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits);

(2) for permit renewal, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted;

(3) for the initial authorization to operate under a general operating permit, information necessary to determine qualification for, and to assure compliance with, the general operating permit;

(4) for the renewal of an authorization to operate under a general operating permit, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted; or

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application Revisions When a General Operating Permit is Revised or Repealed).

(c) An applicant may submit an abbreviated initial permit application, containing only the information in §122.132 of this

title deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

#### *§122.136. Application Deficiencies.*

(a) All applications submitted under this chapter are subject to the requirements of this section.

(b) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error.

(c) If the site becomes subject to additional applicable requirements or state-only requirements after the application is submitted, the applicant shall submit any information necessary to address those requirements no later than 60 days after becoming subject to the requirements. However, if only an abbreviated application has been submitted, information regarding the newly applicable requirement is not required to be submitted before the executive director requests the remaining application information.

(d) If while processing an application, the executive director determines that additional information is necessary to evaluate or take final action on that application, the executive director may request the information and set a reasonable deadline for a response.

#### *§122.139. Application Review Schedule.*

The executive director shall take final action to approve, void, or deny permit applications according to the following schedule.

(1) Under the interim operating permit program, for those initial applications required to be submitted by January 25, 1997, or July 25, 1997, the executive director shall take final action on at least one-third of those applications annually through July 25, 1999.

(2) Under the full operating permit program, for those initial applications required to be submitted, by February 1, 1998, the executive director shall take final action on at least one-third of those applications annually.

(3) For any permit application containing an early reduction demonstration under FCAA, §112(i)(5) (relating to Schedule for Compliance), the executive director shall take final action no later than nine months after receipt of the complete application.

(4) Except as noted in paragraphs (1)-(3) of this section, the executive director shall take final action on an application for an initial permit or permit renewal no later than 18 months after the date on which the executive director deems the application complete.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713904

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966

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## Permit Content

### 30 TAC §§122.142–122.146, 122.148

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015–382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513–382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054–382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561–382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001–7.358, which provide for enforcement.

#### §122.142. *Permit Content Requirements.*

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143–122.146 of this title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., NSPS Kb);

(B) except as provided by the phased application process, the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph.

(c) Each permit shall contain specific terms and conditions for each emission unit fulfilling periodic monitoring requirements as required by the executive director sufficient to assure compliance with the applicable requirements.

(d) For permits undergoing the phased application process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Application Process for Initial Applications).

(e) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(e)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(e)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(f) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(g) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

#### §122.143. *General Terms and Conditions.*

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA, except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization

to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (relating to Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and may be grounds for enforcement action. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance; or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director.

(9) If a federally enforceable only applicable requirement is adopted by the commission, the permit holder shall submit an application for an administrative permit revision for the removal of the federally enforceable only designation. The application shall be submitted no later than 12 months after the adoption of the requirement by the commission.

(10) If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the

incorporation of the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(11) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(12) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(13) The permit does not convey any property rights of any sort, or any exclusive privilege.

(14) A copy of the permit shall be maintained at the location specified in the permit.

(15) For general operating permits, a copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(16) Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(17) Representations in acid rain applications and applicability determinations and the bases for the determinations in general operating permit applications are conditions under which the permit holder shall operate.

(18) No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

(19) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

#### *§122.144. Recordkeeping Terms and Conditions.*

Unless otherwise specified in the permit, the following recordkeeping requirements shall become terms and conditions of the permit.

(1) The permit holder shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. If an applicable requirement or state-only requirement specifies a longer data retention period, the records shall be maintained for at least the period of time specified in the applicable requirement or state-only requirement. The monitoring records shall include, but are not limited to, the following:

(A) the date, place as defined in the permit, and time of sampling or measurements;

(B) the date(s) analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used;

(E) the results of such analyses;

(F) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement;

(G) the data from all calibration and maintenance records;

(H) all strip-chart recordings for continuous monitoring instrumentation; and

(I) copies of all reports required by the permit.

(2) Records may be stored electronically.

(3) All records required to be maintained by this chapter shall be maintained at the location specified in the permit or in the authorization to operate under a general operating permit.

(4) Records required by the permit, including confidential information, shall be provided, upon request, in a legible form, to representatives from the commission or the local air pollution control program having jurisdiction within a reasonable period of time.

(5) The EPA may require that the records be sent directly to the EPA along with any claim of confidentiality. Any confidentiality claim should be made in accordance with federal law, including 40 CFR 2.

(6) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

*§122.145. Reporting Terms and Conditions.*

Unless otherwise specified in the permit, the following reporting requirements shall become terms and conditions of the permit.

(1) Monitoring reports.

(A) Reports of monitoring data required to be submitted by an applicable requirement, shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting.

(C) The monitoring reports shall be submitted no later than 30 days after the end of each reporting period.

(D) The reporting of monitoring data does not change the data collection requirements specified in an applicable requirement.

(2) Deviation reports.

(A) The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.

(B) A deviation report shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting. However, no report is required if no deviations occurred over the six-month reporting period.

(C) The deviation reports shall be submitted no later than 30 days after the end of each reporting period.

(D) If a deviation is reported, in writing, under paragraph (3) of this section, the deviation report need only include a reference to the unauthorized emissions, upset or maintenance, and start-up and shutdown report containing details related to the deviation.

(3) Unauthorized emissions, upset or maintenance, and start-up and shutdown reports.

(A) Reports of deviations resulting from any unauthorized emissions, upset or maintenance, and start-up and shutdown shall be submitted in accordance with §§101.6, 101.7, and 101.11

of this title (relating to Upset Reporting and Recordkeeping Requirements; Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Exemptions from Rules and Regulations).

(B) Nothing in this paragraph shall relieve the permit holder from submitting any deviation report in accordance with the requirements of paragraph (2) of this section.

*§122.146. Compliance Certification Terms and Conditions.*

Unless otherwise specified in the permit, the following compliance certification requirements shall become terms and conditions of the permit.

(1) The permit holder shall certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance.

(2) The certification shall be submitted no later than 30 days after the end of the certification period.

(3) The executive director shall make a copy of the compliance certification accessible to the EPA.

(4) The certification shall be based on at a minimum, the monitoring method (or recordkeeping method, if appropriate) required by the permit to be used to assess compliance.

(5) The annual compliance certification shall include or reference the following information:

(A) the identification of each term, or condition, of the permit for which the permit holder is certifying compliance and the method used for determining the compliance status of each emission unit;

(B) for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; and

(C) for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, the following information indicating the potentially intermittent compliance status of the emission unit:

(i) the identification of the emission unit;

(ii) the applicable requirement for which a deviation occurred;

(iii) the monitoring method (or recordkeeping method, if appropriate) used to assess compliance;

(iv) the frequency with which sampling, monitoring, or recordkeeping was required to be conducted by the monitoring or recordkeeping requirement of the permit; and

(v) the total number of times that the assessment required by the monitoring or recordkeeping method specified in the permit indicated that a deviation had occurred;

(D) the identification of all other terms and conditions of the permit for which compliance was not achieved.

*§122.148. Permit Shield.*

(a) At the discretion of the executive director, and upon request by the applicant, the permit may contain a permit shield for specific emission units. The permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.



(b) In order for the executive director to determine that an emission unit qualifies for a permit shield, all information required by §122.132(e)(2), (3) and (8) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) must be submitted with the permit application.

(c) The permit shall contain the following information for the emission units addressed by the permit shield:

(1) determinations by the executive director establishing one of the following:

(A) potentially applicable requirements or potentially applicable state-only requirements specifically identified during the application review process are not applicable to the source; or

(B) duplicative, redundant, and/or contradicting applicable requirements or state-only applicable requirements specifically identified during the application review process are superseded by a more stringent or equivalent requirement; and

(2) a statement that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(d) Any permit that does not expressly state that a permit shield exists shall not provide a permit shield.

(e) Permit shield provisions shall not be modified by the executive director until notification is provided to the permit holder. No later than 90 days after notification of a change in a determination made by the executive director, the permit holder shall apply for the appropriate permit revision to reflect the new determination.

(f) Provisional terms and conditions are not eligible for a permit shield. Any permit term or condition, under a permit shield, shall not be protected by the permit shield if it is replaced by a provisional term or condition or the basis of the term or condition changes.

(g) Nothing in this section shall alter or affect the following:

(1) the provisions of FCAA, §303 (relating to Emergency Orders);

(2) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) the applicable requirements of the acid rain program; or

(4) the ability of EPA to obtain information from a source under FCAA, §114 (relating to Inspections, Monitoring, and Entry).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713905

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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Proposal publication date: May 20, 1997

For further information, please call: (512) 239-1966

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## Miscellaneous

### 30 TAC §122.161, §122.165

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.161. *Miscellaneous.*

(a) The commission shall not grant a variance, under Texas Health and Safety Code, §382.028, from the requirements of this chapter.

(b) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the commission or the EPA.

(c) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities,

provided that the owner or operator has obtained any necessary pre-construction authorization.

*§122.165. Certification by a Responsible Official.*

(a) The following documents shall include a signed certification of accuracy and completeness:

- (1) applications for initial permit issuance;
- (2) applications for revisions;
- (3) applications for reopenings;
- (4) applications for renewals;
- (5) applications for general operating permits;
- (6) general operating permit application revisions;
- (7) reports required by the permit; and
- (8) annual compliance certifications.

(b) The certification of accuracy and completeness shall include the following statement: "I certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the attached documents are true, accurate, and complete."

(c) The certification shall be signed by the responsible official, who shall be one of the following:

(1) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) the delegation of authority to such representatives is approved in advance by the permitting authority;

(2) for a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) for a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(4) for affected sources:

(A) the designated representative insofar as actions, standards, requirements, or prohibitions under FCAA, Title IV or the regulations promulgated thereunder are concerned; and

(B) the designated representative, the alternate designated representative, or a person meeting the provisions of paragraphs (1), (2), or (3) of this subsection for any other purposes under 40 CFR 70.

(d) The responsible official need not be the same person for each required submittal, and the selection of a responsible official does not preclude the naming of a separate technical contact.

(e) The duly authorized representative need not be the same person for each required submittal, and the selection of a duly

authorized representative does not preclude the naming of a separate technical contact.

(f) If the responsible official for the permit changes, the permit holder must maintain documentation of the change with permit. The permit holder must notify the executive director of any change in the responsible official no later than at the next submittal requiring certification under this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

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## Subchapter C. Initial Permit Issuances, Revisions, Reopenings, and Renewals

### Initial Permit Issuances

#### 30 TAC §122.201, §122.204

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085,

which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

*§122.201. Initial Permit Issuance.*

(a) A permit may be issued by the executive director provided the following:

(1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);

(2) the conditions of the permit provide for compliance with the requirements of this chapter; and

(3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(b) The permit will not be final until the public petition requirements of this chapter have been satisfied.

(c) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.

(d) All permits shall have terms not to exceed five years from initial issuance or renewal.

(e) At the discretion of the executive director, more than one permit may be issued for a site.

(f) Neither the adoption of a general operating permit nor the granting of an authorization to operate under a general operating permit shall be required to meet the requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

(g) If the permit application does not meet the criteria of this chapter, the executive director may deny the permit application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Permit Revisions

**30 TAC §§122.210-122.213, 122.215-122.217, 122.219-122.221**

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

*§122.210. General Requirements for Revisions.*

(a) The permit holder shall submit an application to the executive director for a revision to a permit for those activities at a site which change, add, or remove one or more permit terms or conditions.

(b) If applicable, the permit holder shall submit an application to the executive director for a revision to a permit to address the following:

(1) the adoption of an applicable requirement previously designated as federally enforceable only;

(2) the promulgation or adoption of a new applicable requirement;

(3) the adoption of a new state-only requirement; or

(4) a change in a state-only designation.

(c) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.

(d) Provisional terms and conditions are not eligible for a permit shield.

(e) The permit holder may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(f) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the permit holder's discretion.

(g) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the permit holder's discretion.

(h) General operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of this subchapter, but instead are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

#### *§122.211. Administrative Permit Revisions.*

A change to a permit may qualify as an administrative permit revision if the change satisfies one or more of the following:

(1) corrects typographical errors;

(2) increases the frequency of monitoring or reporting requirements without changing any existing emission limitations or standards;

(3) changes the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit;

(4) removes a federally enforceable only designation and does not otherwise affect the permit; or

(5) affects or adds a state-only requirement;

(6) is similar to those in paragraphs (1)-(5) of this section and approved by EPA.

#### *§122.212. Applications for Administrative Permit Revisions.*

(a) An application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit.

(b) An application must also include, at a minimum, the following:

(1) a description of each change;

(2) a description of the emission units affected;

(3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements or state-only requirements;

(4) a statement that each change qualifies for an administrative permit revision; and

(5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

#### *§122.213. Procedures for Administrative Permit Revisions.*

(a) If the following requirements are met, changes at a site or required as the result of the adoption of a state-only requirement, requiring an administrative permit revision may be operated before issuance of the revision:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(2) the permit holder records the information required in §122.212(b) of this title (relating to Applications for Administrative Permit Revisions) before the change is operated; and

(3) the permit holder maintains the information required by §122.212(b) of this title with the permit until the permit is revised.

(b) In every case, the applicable requirements and state-only requirements are always enforceable.

(c) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(d) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after the end of each 12-month period after permit issuance or renewal.

(e) An administrative permit revision may be issued by the executive director provided the following:

(1) the change meets the criteria for an administrative permit revision;

(2) the executive director has received an application; and

(3) the conditions of the permit provide for compliance with the requirements of this chapter.

(f) The executive director shall take final action on an administrative permit revision no later than 60 days after receipt of the application.

#### *§122.215. Minor Permit Revisions.*

A change to a permit that does not meet the criteria for an administrative permit revision or significant permit revision qualifies as a minor permit revision. Minor permit revisions include, but are not limited to, any change that satisfies one or more of the following:

(1) adds a new permit term or condition;

(2) removes one or more emission units from the permit that are no longer operated at the site;

(3) adds an approved alternative means of control; or

(4) adds a new applicable requirement that is promulgated.

#### *§122.216. Applications for Minor Permit Revisions.*

(a) An application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit.

(b) An application must also include, at a minimum, the following:

- (1) a description of each change;
- (2) a description of the emission units affected;
- (3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements;
- (4) a statement that the change qualifies for a minor permit revision; and
- (5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

*§122.217. Procedures for Minor Permit Revisions.*

(a) If the following requirements are met, changes at a site requiring a minor permit revision may be operated before issuance of the revision:

- (1) the permit holder complies with the following:
  - (A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
  - (B) all applicable requirements;
  - (C) all state-only requirements; and
  - (D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);
- (2) the permit holder submits to the executive director a notice containing the information required in §122.216(b) of this title (relating to Applications for Minor Permit Revisions) before the change is operated;
- (3) the permit holder maintains the information required by §122.216(b) of this title with the permit until the permit is revised.

(b) For changes to a permit required as the result of the promulgation or adoption of an applicable requirement, the following requirements apply.

- (1) The permit holder shall comply with the following:
  - (A) Chapter 116 of this title;
  - (B) all applicable requirements;
  - (C) all state-only requirements; and
  - (D) the provisional terms and conditions as defined in §122.10 of this title.
- (2) The permit holder shall record the information required in §122.216(b)(1)-(4) of this title before the compliance date of the new requirement or effective date of the repealed requirement. The information in §122.216(b)(1)-(5) of this title shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.
- (3) The permit holder shall maintain the information required in §122.216(b)(1)-(4) of this title with the permit until the permit is revised.

(c) In every case, the applicable requirements are always enforceable.

(d) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(e) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after the end of each 12-month period after permit issuance or renewal.

(f) A minor permit revision may be issued by the executive director provided the following:

- (1) the changes meet the criteria for a minor permit revision;
- (2) the executive director has received an application;
- (3) the conditions of the permit provide for compliance with the requirements of this chapter; and
- (4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.

(g) The executive director shall take final action on the permit revision application no later than 15 days after the end of the EPA review period, or no later than 15 days after the resolution of any EPA objection, whichever is later.

*§122.219. Significant Permit Revisions.*

A change to a permit shall qualify as a significant permit revision if the change satisfies one or more of the following:

- (1) is a significant change to existing monitoring, record-keeping, reporting, or testing terms or conditions for an emission unit remaining in operation when the applicable requirement has not been revised or repealed through rulemaking;
- (2) removes an emission limitation or standard established through the permit for an emission unit remaining in operation when the basis of the determination at the site remains unchanged and the applicable requirement or has not been revised or repealed through rulemaking;
- (3) changes a state-only designation to an applicable requirement designation;
- (4) affects or adds a term or condition resulting from emissions averaging as allowed under an applicable requirement;
- (5) affects or adds a term or condition resulting from a request by the permit holder to eliminate duplicative, redundant, and/or contradicting requirements, under §122.148(c)(1)(B) of this title (relating to Permit Shield);
- (6) affects or adds an applicable emission limitation, standard, monitoring, recordkeeping, reporting, or testing requirement that is required, but not specifically defined, by an applicable requirement;
- (7) affects or adds a term or condition resulting from early reductions under FCAA, §112(i)(5) (relating to Early Reductions);
- (8) affects a term or condition or the basis thereof, that is subject to the permit shield and the permit holder has requested to retain the permit shield for emission units remaining in service;
- (9) adds a term or condition for which the permit holder has requested a permit shield;
- (10) affects or adds a term or condition resulting from a determination established under FCAA, §112(g) (relating to Modifications) or §112(j) (relating to Equivalent Emission Limitation by Permit); or
- (11) is a modification under provisions of FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

(12) affects or adds a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

*§122.220. Applications for Significant Permit Revisions.*

An application must include, at a minimum, the following:

- (1) a description of the change;
- (2) a description of the emission units affected;
- (3) a description of the emissions affected by the change;
- (4) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

*§122.221. Procedures for Significant Permit Revisions.*

(a) Changes requiring a significant permit revision shall not be operated before the permit is revised. For those changes, the permit holder shall do the following:

(1) comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) submit to the executive director a request for a permit revision including the information required in §122.220 of this title (relating to Applications for Significant Permit Revisions).

(b) A significant permit revision may be issued by the executive director only if all of the following conditions have been satisfied:

- (1) the change meets the criteria for a significant permit revision;
- (2) the permit holder has submitted an application;
- (3) the conditions of the permit provide for compliance with the requirements of this chapter; and
- (4) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(c) The significant permit revision shall not be final until the public petition requirements of this chapter have been satisfied.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

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## Permit Reopenings

### 30 TAC §122.231

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of

the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

*§122.231. Permit Reopenings.*

(a) The executive director shall reopen a permit for cause. Cause shall be limited to one or more of the following:

(1) the promulgation or adoption of a new applicable requirement affecting emission units at the site, unless one of the following applies:

(A) the new requirement is incorporated into a permit which addresses the emission unit subject to the new requirement; or

(B) the effective date of the requirement is later than the permit expiration date;

(2) the permit contains a material mistake;

(3) inaccurate statements were made in establishing the emissions standards or other terms and conditions of the permit;

(4) the executive director determines that the permit must be revised to assure compliance with the applicable requirements; or

(5) a phased application schedule in the permit requires a reopening.

(b) The following procedures shall apply if EPA initiates a reopening by notifying the executive director in writing that cause, as defined in this section, exists to terminate or revise a permit.

(1) The executive director shall submit a proposed determination regarding the reopening to the EPA no later than 90 days after receipt of the notification.

(2) Upon receipt of the proposed determination, the EPA shall have 90 days to object, in writing, to the proposed determination.

(3) The executive director shall have 90 days from the end of the EPA review period, or the resolution of any objection, to take action on the reopening.

(c) Reopenings shall be completed and the permit issued by the executive director not later than 18 months after promulgation or adoption of the applicable requirement.

(d) The executive director shall provide 30 day's notice of intent to reopen, unless a shorter notice is authorized by the executive director due to an emergency.

(e) Reopenings shall be subject to the requirements of §122.201 of this title (relating to Initial Permit Issuance). These procedures shall affect only those parts of the permit for which cause to reopen exists.

(f) The permit holder shall provide any information requested by the executive director to complete the reopening.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Permit Renewals

### 30 TAC §122.241, §122.243

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-

382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### §122.243. Permit Renewal Procedures.

(a) A permit may be renewed by the executive director only if all of the following conditions have been satisfied:

(1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);

(2) the conditions of the permit will provide for compliance with all requirements of this chapter;

(3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(b) The renewed permit will not be final until the public petition requirements of this chapter have been satisfied.

(c) The executive director shall make a copy of the renewal application, draft permit, and any required notices accessible to the EPA.

(d) In determining whether and under what conditions a permit should be renewed, the executive director shall consider the following:

(1) whether the draft permit provides for compliance with all applicable requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(e) At the discretion of the executive director, during permit renewal, any permits at a site may be combined into a single permit which satisfies the requirements of this section.

(f) The executive director may not impose requirements less stringent than those of the existing permit unless a determination is

made that the proposed changes will meet the requirements of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter D. Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition

### Public Announcement

#### 30 TAC §122.312

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the com-

mission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### §122.312. *Public Announcement.*

(a) Public announcement requirements apply to minor permit revisions.

(b) The executive director shall publish an announcement of a draft permit for a minor permit revision on the commission's publicly accessible electronic media. The announcement shall contain the following:

- (1) permit application number;
- (2) permit holder's name and address;
- (3) description of the location of the site;
- (4) the location and availability of the following:
  - (A) copies of the complete permit application;
  - (B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(5) a description of the comment procedures, including the duration of the public announcement comment period; and

(6) name, address, and phone number of the commission office to be contacted for further information.

(c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the county in which the site is located.

(d) The executive director shall furnish a notice of the public announcement to the air pollution control agency of any affected state.

(e) The executive director shall make available for public inspection the draft permit and the complete revision application throughout the comment period during business hours at the commission's central office and at the commission's regional office where the site is located.

(f) The executive director shall receive public comment for 30 days after the announcement of the draft permit is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(h) Public notice requirements satisfy public announcement requirements.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).



This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713911

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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## Public Notice

### 30 TAC §122.320, §122.322

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts,

§5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### §122.320. Public Notice.

(a) Public notice requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) The executive director shall direct the applicant to publish a notice of a draft permit, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The notice shall contain the following information:

- (1) the permit application number;
  - (2) the applicant's or permit holder's name and address;
  - (3) a description of the location of the site or proposed location of the site;
  - (4) a description of the activity or activities involved in the permit application;
  - (5) for significant permit revisions, the air pollutants with emission changes;
  - (6) the location and availability of the following:
    - (A) the complete permit application;
    - (B) the draft permit;
    - (C) all other relevant supporting materials in the public files of the agency;
  - (7) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;
  - (8) the notification that a person who may be affected by the emission of air pollutants from the site is entitled to request a notice and comment hearing; and
  - (9) the name, address, and phone number of the commission office to be contacted for further information.
- (c) One notice may be published for multiple permits at a site with the approval of the executive director.
- (d) The applicant shall submit a copy of the public notice and date of publication to the executive director and all local air pollution control agencies with jurisdiction in the county in which the site is located.
- (e) The applicant shall submit a statement to the executive director, with a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the sign required by subsection (h) of this section has been posted consistent with the provisions of that subsection.
- (f) The executive director shall make a copy of the permit application, the draft permit, and any required notices accessible to the EPA.
- (g) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the commission's regional office where the site is located.
- (h) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches.

(B) The sign shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT" in no less than two-inch bold face block printed capital lettering.

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch bold-face block printed capital lettering.

(D) The sign shall include the words "for further information contact" in no less than 1/2-inch lettering.

(E) The sign shall include the words "TEXAS NATURAL RESOURCE CONSERVATION COMMISSION," and the address of the appropriate commission office in no less than one-inch bold-face capital lettering and 3/4-inch bold-face lower case lettering.

(F) The sign shall include the phone number of the appropriate commission office in no less than two-inch bold-face numbers.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director must approve the variations before signs are posted.

(4) One sign may be posted for multiple permits at a site with the approval of the executive director.

(i) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(j) During the 30-day public notice comment period, any person who may be affected by emissions from a site regulated under this chapter may request in writing a notice and comment hearing on the draft permit.

(k) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(l) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

#### *§122.322. Bilingual Public Notice.*

(a) The requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, §21.109, and 19 Texas Administrative Code (TAC) §89.2(a) (relating to Professional Development),

or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.2(g). Schools not governed by the provisions of 19 TAC §89.2 shall not be considered in determining applicability of the requirements of this section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) Each notice under this section shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this section are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(7) Each alternate language publication shall follow the requirements of §122.320 of this title (relating to Public Notice) not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of §122.320 of this title.

(b) Elementary or middle schools that offer English as a second language under 19 TAC §89.2(d), and are not otherwise affected by 19 TAC §89.2(a), will not trigger the requirements of subsection (a) of this section.

(c) If the notices required by §122.320 of this title and §122.340 of this title (relating to Notice and Comment Hearing) are combined, the combined notice is subject to the requirements of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713912

Kevin McCalla

Director, Legal Division  
Texas Natural Resource Conservation Commission  
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For further information, please call: (512) 239-1966

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**Affected State Review**

**30 TAC §122.330**

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713913  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Effective date: November 10, 1997  
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For further information, please call: (512) 239-1966

◆ ◆ ◆  
**EPA Review**

**30 TAC §122.350**

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.350. *EPA Review.*

(a) EPA review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

(b) The executive director shall submit the proposed permit to the EPA.

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA after the end of the public comment period.

(2) For minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(c) Upon receipt of the proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(d) The executive director may issue the permit provided the following:

(1) the EPA does not object to the issuance of the proposed permit;

(2) the EPA notifies the executive director that the EPA will not object to the issuance of the permit; or

(3) the executive director resolves any objections received.

(e) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit, if necessary, in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under FCAA, Title V (relating to Permit).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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## Public Petition

### 30 TAC §122.360

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes

in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### §122.360. Public Petition.

(a) Public petition requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) If the EPA does not file an objection with the executive director, any person, including the applicant, affected by a decision of the commission under this chapter may petition the EPA to make an objection. After receiving a petition, the EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(c) The petition must be filed with the EPA within 60 days after the expiration of EPA's 45-day review period.

(d) A copy of the petition shall be provided to the executive director and the applicant by the petitioner.

(e) The petition does not limit the effectiveness of a permit issued by the executive director or the finality of the executive director's action for purposes of an appeal under Texas Health and Safety Code, §382.032.

(f) Petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates in the petition to the EPA that it was not possible to raise the objections within the public comment period, or that the grounds for the objection arose after the public comment period. The petition shall identify all objections.

(g) If the EPA objects to the permit as a result of a petition filed under this section before issuance of the permit, the executive

director shall not issue the permit until EPA's objection has been resolved.

(h) If the executive director has issued a permit before receipt of an EPA objection based on a public petition, the permit remains effective and the executive director shall have 90 days from the receipt of an EPA objection to resolve any objection and, if necessary, terminate or revise the permit.

(1) In the event additional information is needed from the permit holder, the executive director may request from EPA a 90-day extension to resolve the objection.

(2) If the executive director fails to resolve the objection, EPA will revise, terminate, or revoke the permit, and the executive director may issue only a revised permit that satisfies EPA's objection.

(3) The permit holder will not be in violation of the requirement to have submitted a timely and complete application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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## Subchapter E. Acid Rain Permits

### 30 TAC §§122.410, 122.412, 122.414

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for

federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

#### §122.410. Operating Permit Interface.

(a) The commission hereby adopts and incorporates by reference, except as specified in this section, the provisions of 40 Code of Federal Regulations (CFR) Part 72 (with an effective date of July 17, 1995), Part 74 (with an effective date of May 4, 1995), and Part 76 (with an effective date of February 17, 1997) for purposes of implementing an acid rain program that meets the requirements of FCAA, Title IV.

(b) Applicants for sources subject to 40 CFR 72, 74, and 76 shall comply with those requirements.

(c) If the provisions of 40 CFR 72, 74, and 76 conflict with or are not included in this chapter, the provisions of 40 CFR 72, 74, and 76 shall apply and take precedence except for the following.

(1) References to 40 CFR 70 in 40 CFR 72, 74, and 76 shall be satisfied by the requirements of this chapter for the purposes of implementing the acid rain program.

(2) The procedural requirements for acid rain permit revisions in 40 CFR 72, Subpart H (relating to Acid Rain Permit Revisions) shall be satisfied by §122.414 of this title (relating to Acid Rain Permit Revisions).

#### §122.412. Acid Rain Permit Application Due Dates.

The designated representative shall submit acid rain permit applications for affected units subject to 40 CFR 72, 74, or 76 to the executive director by the following dates.

(1) Sulfur dioxide.

(A) Applications for initial Phase II acid rain permits with an existing unit under 40 CFR 72.6(a)(2) shall be submitted by January 1, 1996.

(B) Applications for Phase II acid rain permits for new units shall be submitted at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

(C) Applications for Phase II acid rain permits for units under 40 CFR 72.6(a)(3)(ii) shall be submitted at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 megawatts of electricity.

(D) Applications for Phase II acid rain permits for units under 40 CFR 72.6(a)(3)(iii) shall be submitted at least 24

months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

(E) Applications for Phase II acid rain permits with a unit under 40 CFR §72.6(a)(3)(iv) or (vii) shall be submitted before the later of January 1, 1998, or the March 1 of the year following the three-year calendar period in which the unit fails to meet the requirements of 40 CFR §72.6(b)(4) or (7).

(F) Applications for Phase II acid rain permits with a unit under 40 CFR §72.6(a)(3)(v) or (vi) shall be submitted before the later of January 1, 1998, or the March 1 following the calendar year in which the unit fails to meet the requirements of 40 CFR §72.6(b)(5) or (6).

(2) Nitrogen oxide. Applications for initial Phase II acid rain permits for nitrogen dioxide for affected units subject to 40 CFR 76 shall be submitted by January 1, 1998, except for early election units.

(3) Opt-in sources. Applications for acid rain permits for opt-in sources to the acid rain program shall be submitted in accordance with 40 CFR 74.

*§122.414. Acid Rain Permit Revisions.*

(a) For the purposes of implementing the procedural requirements of 40 CFR 72, Subpart H (relating to Acid Rain Permit Revisions Procedural Sections), the following sections of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) shall be substituted.

(1) The provisions of §122.212 and §122.213 of this title (relating to Applications for Administrative Permit Revisions and Procedures for Administrative Permit Revisions) shall be used to satisfy the procedural requirements of 40 CFR §72.83(b) and §72.80(d) for acid rain permit administrative amendments, except that the executive director shall submit the revised portion of the acid rain permit to EPA no later than ten working days after the date of final action on the revision.

(2) The provisions of §122.216(b) and §122.217(f) of this title (relating to Applications for Minor Permit Revisions and Procedures for Minor Permit Revisions) shall be used to satisfy the procedural requirements of 40 CFR §72.82 for acid rain fast-track modifications with the following restrictions.

(A) The designated representative shall provide a copy of the complete application requesting a minor permit revision to the executive director, the EPA, and any person entitled to a written notice (as defined in 40 CFR §72.65(b)(1)(ii), (iii), and (iv)).

(B) Changes shall not be operated before the permit is revised.

(C) Provisional terms and conditions do not apply.

(D) The executive director shall initiate procedures for public announcement within five days of receipt of the application request. However, the application rather than the draft permit shall be the subject of public announcement.

(E) The executive director shall consider the permit application and comments received and provide approval, in whole or in part with changes or conditions as appropriate, or disapproval of the permit revision within 30 days of the close of the public announcement period.

(3) The provisions of §122.220 and §122.221 of this title (relating to Applications for Significant Permit Revisions and Procedures for Significant Permit Revisions) shall be used to satisfy

the procedural requirements of 40 CFR §72.81(c) for acid rain permit modifications.

(4) The provisions of §122.231 of this title (relating to Permit Reopenings) shall be used to satisfy the procedural requirements of 40 CFR §72.85 for acid rain permit reopenings.

(b) The following provisions shall apply to the procedural requirements for acid rain permit revisions.

(1) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the option of the designated representative.

(2) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the option of the designated representative.

(3) The designated representative may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(4) Provisional terms and conditions are not eligible for a permit shield.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Subchapter F. General Operating Permits

### Procedural Requirements for General Operating Permits

#### 30 TAC §§122.501–122.506, 122.508

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance

of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

*§122.501. General Operating Permits.*

(a) The commission may adopt by rule a general operating permit for numerous similar stationary sources provided the following:

- (1) the conditions of the general operating permit provide for compliance with all requirements of this chapter;
- (2) the requirements under §122.506 of this title (relating to Public Notice for General Operating Permits) have been satisfied;
- (3) the requirements under §122.330 of this title (relating to Affected State Review) have been satisfied;
- (4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied;
- (5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied; and
- (6) the adoption process is consistent with the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(b) General operating permits are subject to the requirements under §122.360 of this title (relating to Public Petition).

(c) Each general operating permit shall identify the terms and conditions with which the permit holder shall comply.

(d) The commission may amend or repeal any general operating permit under the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(e) The executive director shall make a copy of the proposed draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements of this section, at least every five years after the effective date.

*§122.502. Authorization to Operate.*

(a) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who submit a complete application under §122.134 of this title (relating to Complete Application) and who qualify for the general operating permit.

(b) Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become conditions under which the permit holder shall operate.

(c) The permit holder may be subject to enforcement action for operating without a permit if the permit holder, having been granted the authorization to operate under a general operating permit, is later determined not to qualify for the general operating permit.

(d) Authorizations to operate under general operating permits shall have terms not to exceed five years.

(e) More than one authorization to operate under a general operating permit may be granted for a site.

(f) A copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(g) The granting of an authorization to operate under a general operating permit shall not be a final action by the executive director, and therefore, is not subject to judicial review.

(h) General operating permits shall not be authorized for affected units under the acid rain program.

(i) The executive director shall make a copy of the authorization to operate accessible to the EPA.

*§122.503. Application Revisions for Changes at a Site.*

(a) The permit holder shall submit an updated application to the executive director for the following activities at a site:

- (1) a change, addition, or removal of any applicability determinations or the basis of any determinations in the original general operating permit application;
- (2) a correction of typographical errors;
- (3) a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) The updated application for a general operating permit under this subsection shall contain at a minimum the following:

- (1) a description of each change;
- (2) a description of the emission unit affected;
- (3) any changes in the applicability determinations;
- (4) any changes in the bases of the applicability determinations;
- (5) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);
- (6) a statement that the emission units qualify for the general operating permit; and
- (7) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements; and

(C) all state-only requirements;

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the information required in subsection (b) of this section before the change is operated;

(3) the permit holder maintains with the authorization to operate under the general operating permit, the information required by subsection (b) of this section until the executive director grants a revised authorization to operate; and

(4) the permit holder operates under the representations in the application required by this subsection.

(d) The permit holder need not comply with the representations in the original application that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

(e) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(g) If the emission units addressed in the authorization to operate no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

(i) Revisions to applications under this section, and the granting of authorizations to operate under a general operating permit, shall not be a final action by the executive director, and therefore, are not subject to judicial review.

*§122.504. Application Revisions When a General Operating Permit is Revised or Repealed.*

(a) This section applies if the permit holder's authority to operate under a general operating permit is affected by the revision or repeal of a rule.

(1) The permit holder must submit an application for the general operating permit containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes, additions, or removals of applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(E) a statement that the emission units qualify for the general operating permit; and

(F) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(2) The application must be submitted by the effective date of the general operating permit.

(3) The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions).

(4) The permit holder shall record the information required in paragraph (1)(A)-(E) of this subsection before the compliance date of the new requirement or effective date of the repealed requirement. The information in paragraph (1)(A)-(F) of this subsection shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.

(5) The permit holder shall maintain the information required in paragraph (1)(A)-(E) of this subsection with the permit until a new authorization is granted.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the authorization to operate qualify for the revised general operating permit;

(2) the applicability determinations remain unchanged; and

(3) basis for each applicability determination remain unchanged.

(c) If a general operating permit is repealed and not replaced, the authorization to operate under the general operating permit is revoked.

(d) If a permit holder's authority to operate under a general operating permit is affected by the revision or repeal of a general operating permit and the permit holder no longer qualifies for the general operating permit or no longer intends to operate under the general operating permit, the permit holder must apply for another operating permit by the effective date of the revision or repeal of the general operating permit.

(e) Those representations in the application not affected by the revision remain conditions under which the permit holder shall operate.

(f) In every case, the applicable requirements and state-only requirements are always enforceable.

(g) The permit holder need not comply with the representations in the original application or the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

*§122.505. Renewal of the Authorization to Operate Under a General Operating Permit.*

(a) Authorizations to operate under general operating permits shall expire no later than five years from the date of the initial authorization to operate or renewal of the authorization to operate.



(b) The executive director shall provide written notice to the permit holder that the authorization to operate under the general operating permit is scheduled for review.

(1) The notice will be provided by mail no later than 12 months before the expiration of the authorization to operate under the general operating permit.

(2) The notice shall specify the procedure for submitting a renewal application.

(3) Failure to receive notice does not affect the expiration date of the authorization or the requirement to submit a timely and complete application.

(c) A renewal application shall be submitted by the permit holder to the executive director at least six months, but no earlier than 18 months, before the date of expiration of the authorization to operate under the general operating permit.

(d) The executive director shall grant a request for a renewal of an authorization to operate under a general operating permit to applicants who submit a complete application under §122.243 of this title (relating to Permit Renewal Procedures) and who qualify for the general operating permit.

(e) Expiration of the authorization to operate terminates the permit holder's right to operate unless a timely and complete renewal application has been submitted. After a timely and complete renewal application is submitted, the permit holder may continue to operate under the terms and conditions of the previous authorization to operate until the new authorization to operate is granted or denied.

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(g) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

(h) The renewal of an authorization to operate under a general operating permit shall not be a final action by the executive director, and therefore, is not subject to judicial review.

#### *§122.506. Public Notice for General Operating Permits.*

(a) Before the adoption of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the proposed draft general operating permit rule. In addition to the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002, the notice shall contain the following information:

(1) a description of the activities involved in the proposed draft general operating permit rule;

(2) the location and availability of copies of the proposed draft general operating permit rule;

(3) a description of the comment procedures, including the duration of the public notice comment period;

(4) the time, place, and nature of the hearing that will be held regarding the proposed draft general operating permit rule;

(5) a brief description of the purpose of the hearing that will be held regarding the proposed draft general operating permit rule; and

(6) the name, address, and phone number of the commission office to be contacted for further information.

(b) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

(c) The executive director shall make the proposed draft general operating permit rule available for public inspection throughout the comment period during business hours at the commission's central office.

(d) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the proposed draft general operating permit rule.

(e) The proposed draft general operating permit rule may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(f) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(g) The executive director shall provide 30 day's advance notice of the hearing.

#### *§122.508. Notice and Comment Hearings for General Operating Permits.*

(a) Before the adoption of any general operating permit, the executive director shall hold a notice and comment hearing regarding the proposed draft general operating permit rule.

(b) All hearings regarding general operating permits shall be conducted according to the APA.

(c) Any person may submit oral or written statements and data concerning the proposed draft general operating permit rule.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of the hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) Any person who believes that any condition of the proposed draft general operating permit rule is inappropriate or that the preliminary decision to adopt the general operating permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(f) Any supporting materials for comments submitted under subsection (c) of this section shall be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) state or federal statutes and regulations;
- (3) EPA documents of general applicability; or
- (4) other generally available reference materials.

(g) The executive director shall keep a record of all comments and also of the issues raised in the hearing. This record shall be available to the public.

(h) The proposed draft general operating permit rule may be changed based on comments pertaining to whether the proposed draft general operating permit rule provides for compliance with the requirements of this chapter.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource Conservation Commission

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## Chapter 213. Edwards Aquifer

### Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties

#### 30 TAC §213.14

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §213.14, with changes to the proposed text as published in the July 8, 1997, issue of the *Texas Register* (22 TexReg 6400).

#### EXPLANATION OF ADOPTED RULE

The purpose of the amendments is to implement legislative changes to Texas Water Code, §26.0461(a) and (d) regarding Fees for Edwards Aquifer Plans, as enacted by House Bill (HB)1016, 75th Legislature (1997). Section 26.0461 (a), as amended, authorizes the commission to assess fees for processing Edwards Aquifer protection plans or amendment to plans and for inspecting the construction and maintenance of water quality protection measures. Section 26.0461 (d), as amended, raises the cap on any fee imposed under §26.0461 from \$2000 to \$5000. Based on a five-year average, the estimated annual fee revenue shortfall for the program under the current regulations is \$352,200. The adopted fees will generate sufficient revenue to cover this shortfall in periods of strong economic growth.

Section 213.14, Fee Schedule, contains the criteria for calculating the application fee for the review of an Edwards Aquifer protection plan and modifications to a plan. The water pollution abatement plan (WPAP) fee schedule for one single-family residential dwelling on less than 5 acres is \$500. The WPAP fee schedule for one single-family residential dwellings and parks reflects four categories based on size in acres with fees set at \$1,000 for less than 5 acres, \$2,000 for 5 to less than 10 acres, \$3,000 for 10 to less than 50 acres, and \$5,000 for sites 50 acres and greater. The fee schedule for non-residential (commercial, industrial, institutional, schools, and other sites where regulated activities will occur) reflects four categories based on size in acres with fees set at \$2,000 for less than 1 acre, \$3,000 for 1 to less than 5 acres, \$4,000 for 5 to less than 10 acres, and \$5,000 for 10 acres and greater.

Sewage collection system plans and modifications are assessed a fee of \$.50 per linear foot, with a minimum fee of \$500 and a maximum fee of \$5,000. Underground or permanent aboveground storage tank system facility plans and modifications are assessed a fee of \$500 per tank or piping system, with a minimum fee of \$500 and a maximum fee of \$5,000.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to amend the regulations set forth in Chapter 213 to adjust the amounts of fees assessed on persons whose activities have the potential for polluting the Edwards Aquifer and hydrologically connected surface water. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rule.

Promulgation and enforcement of these rules will not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Owners of property that is used for activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface water are presently required to submit an application for approval or modification of a plan as well as an application fee at the time the application is filed. This rulemaking, which to a large extent increases the amount of fees such owners will be responsible for paying, does not further restrict the right to the property. Also, this rulemaking is not the producing cause of a reduction in the market value of the affected private real property. Therefore, this action does not create a burden on the affected private real property.

In addition, the Texas Government Code, §2007.003(b)(13), exempts from its coverage those governmental actions that are taken in response to a real and substantial threat to public health and safety, that are designed to significantly advance the health and safety purpose, and that do not impose a greater burden than is necessary to achieve the health and safety purpose. The proposed rulemaking will significantly contribute to prevention of the threat of pollution of the Edwards Aquifer, the sole or primary source of water for over 1.5 million people, by providing adequate resources to the agency to enable it to enforce the rules contained in Chapter 213, which in its entirety addresses a real and substantial threat to public health and safety, significantly advances the health and safety purpose, and does not impose a greater burden than is necessary to achieve that purpose.

#### COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the adopted rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program (CMP). The adopted rule does not govern any of the actions that must be subject to the goals and policies of the CMP, pursuant to 31 TAC §505.11.

#### HEARINGS AND COMMENTERS

Public hearings on this rule were held in San Antonio on August 4, 1997 and in Austin on August 7, 1997, with oral testimony provided at both hearings. The comment period closed August 8, 1997. Comments on 26 different topic areas were provided by 51 commenters that were both general and specific on the overall proposal. The following 47 commenters generally supported the rules but suggested changes: State Representative Robert Puente, 41 individuals who are members of Clean Water Action (CWA) and the state program director for CWA, San Antonio Water System, Pape-Dawson Engineers, Regional Clean Air and Water Association, and an individual. One individual opposed the rule because it would not slow development. Two commenters did not generally voice support or opposition to the proposal, but suggested changes: an individual and Aquifer Guardians in Urban Areas. Northside Neighborhoods for Organized Development made statements about the program but offered no comment on the proposed rule.

An individual, the state program director for CWA, NNOD, and RCAWA provided several comments that were beyond the scope of the proposed fee rule, and will not be addressed in this adoption preamble. However, the commission will consider these comments as the agency drafts the next phase of rules for the Edwards Aquifer protection program.

State Representative Robert Puente commented that issues dealing with additional staff being hired for San Antonio or transfer of staff from Austin to San Antonio are best left up to the agency to decide where these resources are going to be used and how these increased fees are going to be spent.

The SAWS commented that the same level of service and compliance should be provided in both the Austin and San Antonio regions and that staffing allocation decisions should be based upon the following: the amount of Edwards Aquifer Recharge Zone for which each regional office is required to provide compliance activities; the number of WPAPs approved since permanent pollution abatement has been required to reflect the volume of inspection and/or compliance work that needs to be done to assure compliance with existing plans; the total number of submittals, including technical requests and cave letters, received annually; and the number of WPAPs submittals received annually. They suggest that these factors would more accurately reflect the total workload of each region and would allow for more equitable staffing between the regions rather than basing staffing allocations on just the number of WPAPs received by a region. An individual stated that currently fees were not being returned to the San Antonio field office and continued that there is a lack of sufficient personnel to adequately inspect the increasing development on the recharge zone and suggests that the additional fee revenue be added to the San Antonio field office budget so that they can do the job adequately. PDE commented that it was unfortunate that the proposed increase to the fees will only maintain the status quo and does not provide for any increase in staff above the existing staff. PDE also stated that there is no guarantee that the funds

collected will stay in the region that collected the fee and that the Austin regional office gets 60 percent of the funding and staff with 40 percent of the submittals. PDE requested that funding by region would enable the San Antonio regional office to provide enforcement.

The commission responds that the current allocation of positions in the San Antonio and Austin regional offices accurately reflects the percentage of program workload performed in each office. At the end of each fiscal year (FY), the regional offices submit workload data to the deputy director for the Office of Compliance and Enforcement. These data show that for the past several years the workload and amount of fees collected has been approximately 60 percent for the Austin Region and 40 percent for the San Antonio Region. Current staffing allocation is six full-time equivalent (FTE) staff for the Austin Region and four FTEs for the San Antonio office. The commission also notes that historically, fees collected for the program have not been sufficient to cover the full costs of program administration and oversight. As a result, the costs of operating the program have been supplemented by the state water quality fund and with United States Environmental Protection Agency non-point source program grants.

State Representative Robert Puente commented that the development community supported the increase in fees to pay for more staff, for better staff, and for more communication capabilities so that the development community can have a quick turnaround on their plans. Individuals concerned about the potential pollution degradation of the aquifer sought the increase in fees to make sure that the agency had the capability and the staff to enhance communications to determine what is going on over the recharge zone, and to expertly review plans to make sure that what is proposed is not only good for the development community but for everyone else, the community at large. Puente noted that HB 1016 was an opportunity for the environmentalists, the quality control people, the developers, and the developing community to allow the commission to do its job and to have the attention that this particular part of the Edwards region needs. Forty-one individuals who are members of CWA and the state program director for CWA suggested that the increase in fees be used for better enforcement of water quality protection to ensure that San Antonio has a safe and reliable drinking water source in the future. The state program director for CWA suggested that fees need to be raised to support enforcement but at the same time prevention is needed. The program director suggested that sufficient resources should be used to support better monitoring, to support better enforcement, to work with interested parties and the SAWS to find a way to improve development that is grandfathered from the San Antonio Water Quality Ordinance. SAWS suggested that the increased fees for larger projects will be a beneficial change if additional revenue is used to provide adequate staff for application review, site inspection and compliance investigations. The RCAWA commented that they agree with the increase in fees but stated that fees alone are not sufficient without follow-up. An individual commented that without follow-up with inspection and enforcement the rule is worthless. Another individual commented that there is no use in increasing the fees if the monies are not spent for monitoring the plans as they unfold and that the San Antonio Field Office monitoring efforts are inadequate.

The commission agrees that increased effort should be directed toward performing more compliance monitoring inspections and enforcement. To that end, commission staff have recommended

operational changes and are drafting rule changes that will result in a reduction in the amount of time required for plan review and approval which will free up staff resources to perform additional compliance monitoring inspections. The commission anticipates that operational changes will be implemented during the first quarter of FY 1998 and that rule changes will become effective during the third quarter of FY 1998.

The SAWS commented that the lack of adequate staffing in the San Antonio region makes it difficult for existing staff to educate the development community and conduct compliance inspections in counties other than Bexar. They stated that there is an apparent lack of compliance with the Edwards rules in counties west of San Antonio and present data that based on submittals of applications to the agency that indicates that no regulated activities have taken place in Kinney and Uvalde Counties in 1994 through 1996 and that one WPAP per year was the only regulated activity that took place in Medina County for the same period of time. PDE commented that they support the efforts to increase fees to strengthen the Edwards Aquifer program. PDE stated that the business community has once before taken the lead to increase fees, to add staff, and reduce review times; however, the fees were increased, but review times were never improved. PDE stated that there is no enforcement of the submitted plans and suggested that the fee modification proposals are a good initial step; however, additional efforts for review and enforcement must continue.

The commission agrees that staffing constraints have limited education and compliance monitoring activities in counties west of Bexar and that increased effort should be directed toward performing more compliance monitoring inspections and enforcement which will include all counties regulated under 30 TAC §213. Commission staff are in the process of implementing operational changes and are drafting rule changes that will result in streamlining the plan review and approval process. As stated earlier, the implementation of this streamlining will free up staff resources to perform additional compliance monitoring inspections and will increase compliance with approved plans and enforcement in cases where non-compliance with 30 TAC §213 exists.

PDE commented that staff continually working on technical guidelines and public hearing responses which never result in a final product or change in regulation, is a hindrance to the review and enforcement under the program. The commenter suggested that the agency partner with SAWS or other agencies that could produce results in these areas.

The commission responds that it is required under §26.046(b) of the Texas Water Code to hold annual public hearings to receive comment on the Edwards Aquifer protection program. Comments received at public hearings in 1994 and 1995 resulted in a comprehensive rule revision which became effective in December 1996. Additional comments received at the 1996 hearings are being considered as commission staff proposes rules for a second phase of rulemaking which is expected to be proposed in November 1997. The commission believes that changes to operational procedures, technical guidelines, and rules have resulted in a more efficient program that protects the water quality of the Edwards Aquifer.

AGUA commented that the recent issue of a new technical guidance document for public comment clearly steps back from the pollution prevention approach. They stated that the new guidance document does not specifically address issues such as

recharge feature protection and that it eliminates classes of pollutants such as oil, grease, and lawn chemicals from regulatory control. They continued that the document downsizes the design criteria for pollution prevention structures and allows new sources of pollution and drinking water degradation, such as effluent application on the recharge zone. The commenter suggests that the agency work with community experts to conduct a program which preserves the aquifer.

The commission believes that the commenter is referring to a very early draft of the Technical Guidance Manual that is currently undergoing extensive revision. The purpose of the manual is to offer a broad range of structural and non-structural best management practices (BMPs) that will continue to provide a high level of protection to the water quality of the aquifer. The first draft of the manual contained information about a number of BMPs that are used in Texas as well as other states. That draft was circulated for review and comment to several engineering firms in the San Antonio and Austin areas as well as to the City of Austin, the San Antonio Water System, the Barton Springs/Edwards Aquifer Conservation District, and the Texas Parks and Wildlife Department. As a result of the comments received, commission staff have determined that some BMPs are not appropriate for use in the Edwards Aquifer recharge zone and these have been deleted from the draft manual. The BMPs that will be included in the final version of the manual will be expected to achieve specific performance standards for pollutant removal. Additionally, staff is drafting a proposed rule that will require BMP performance standards. The commission is taking this approach because it believes that guidance documents should explain how compliance with the rules may be achieved but that they should not include substantive requirements that are not contained within rules. The commission will go through the rulemaking process when it intends to establish a requirement that is enforceable or criteria that an entity must meet in order to receive a permit or other authorization from the commission.

An individual suggested that the proposed fee schedule invites high density residential subdivision and commercial developments by imposing a burdensome application fee on individuals wishing to build one single-family residence on 1 to 5 acres. The commenter suggested that the application fee is relatively high for most individuals but no impediment to established developers who routinely build up to four houses per acre, or construct stores and strip centers with high vehicle traffic. Another individual commented that increasing the fee is not going to do anything to slow development and suggested that the \$3,000 fee may ease the conscience of people who prefer to develop over the recharge zone; however, the amount can be handled easily by the regulated community.

The commission disagrees that the proposed fee schedule imposes a burdensome application fee on individuals wishing to build one single-family residence on less than 5 acres. However, for that category of development, the commission is amending the fee schedule to reflect a fee of \$500 for one single-family residence on less than 5 acres based on the level of effort required to review a WPAP for this type of application. Because the agency receives approximately 5 applications per year that would fall into this category, the decrease in fees will have no significant impact on the funding of the program. The commenter goes on to say that the rule does not distinguish between developers who build up to four houses per acre and developers who build one single-family residence on the same

size area. The commission responds that the fee is not intended to slow development or to affect the degree of development on a given piece of land. The fee is designed to defray the expense arising from reviewing a WPAP filed with the commission and for administering the commission's regulation of activities occurring on and around the Edwards Aquifer.

CWA commented that they support the raising of the fee of up to \$5,000. They stated that they are concerned that the aquifer is suffering from uncontrolled growth over the recharge zone and support a fee structure to redirect development off the recharge zone. The state program director for CWA suggested that the fees be used as a green tax, such that if development is going to cause degradation and put others at a higher risk, then the development should pay for that degradation or potential degradation of a drinking water supply like the Edwards Aquifer. The commenter suggested that Senate Bill (SB) 633 from the 75th Legislative Session concerning the regulatory analysis of major environment rules should apply to this fee because this type of fee should equalize the risk to the cost to the community and to the public health and safety and should help with resources to the agency for protection of the public.

The commission responds that the fee is designed to reimburse the costs incurred to review and evaluate an Edwards Aquifer protection plan, in accordance with HB 1016, which provides that the commission may impose fees for processing plans and for inspecting the projects covered by the plan. The statute does not authorize the commission to assess fees for other purposes. A commenter also stated that SB 633 should apply to this type of fee. The commission disagrees that this proposed rule is subject to SB 633 which applies to rules that exceed an express requirement of state law or that are adopted pursuant to an agency's general powers. The commission believes these proposed fees would be adopted pursuant to a specific statute and do not exceed express requirements in that statute.

SAWS commented that the lack of reduced fees structure for one single family residence or two contiguous single-family residences (duplex) on less than five acres will favor denser residential development over individual homeowners. An individual commented that while application fees are necessary to produce income to support the Edwards Aquifer protection program, a fee schedule which generates revenue based on pollutant load, size of project, and difficulty of technical review should be used. The individual suggested that 1 single-family residence, 1-5 acres in size should pay a fee of \$350 to shift the cost of doing business on the recharge zone from those typically least able to afford it to those who are more capable of spreading the financial burden. SAWS commented that the fee structure should include reduced fees for one single-family residence or two contiguous single-family residences (duplex) on less than five acres. They suggested the following changes to the fee structure for a new category for one single-family residence or two contiguous single-family residences based on size: 1 acre would pay a fee of \$300, more than 1 acre to less than 2 acres would pay a fee of \$350, 2 acres to less than 3 acres would pay a fee of \$400, 3 acres to less than 4 acres would pay a fee of \$450, and 4 to less than 5 acres would pay a fee of \$500. They state that a reduced fee structure for this category has been available to homeowners as an exception to the standard fees for several years and they suggest that these revisions would be consistent with current agency practices. They state that the agency review required for a single homesite is less rigorous than that required for a residential subdivision.

The commission agrees that the potential for pollution and the complexity of technical review and inspections for one single-family residence on a less than 5-acre tract is not as significant as for a residential development which may contain 20 or more residences in the same size area. The commission is therefore amending the fee schedule to reflect a fee of \$500 for one single-family residence on less than 5 acres.

SAWS commented that the minimum application fee for a 1 acre commercial-type sites should be raised to \$2,000. They also suggest that the fee for commercial-type sites that are 1 acre to less than 10 acres be split into two categories: 1 acre to less than 5 acres would pay \$3,000 and 5 to less than 10 acres would pay \$4,000. They suggested that public schools be moved into this fee category and out of the single-family residential dwellings category. They stated that commercial sites of less than one acre are a significant portion of the commercial WPAPs received and that these sites are often high traffic sites such as service stations, convenience stores, and small strip centers. They suggest that WPAPs for all commercial-type sites require an intensive review period and that sites that are less than one acre in size have parking areas which will require permanent pollution abatement measures for the treatment of stormwater run-off. Additionally, they commented that it is inconsistent to charge the same fee for a commercial-type site on less than one acre and a residential development on less than five acres because of the review time differences. An individual suggested that commercial and industrial projects including mass grading should be charged the following acres size fees: less than 1 acre, \$2,000; greater than or equal to 1 acre to 5 acres, \$3,000; greater than or equal to 5 acres to 10 acres, \$4,000; and greater than or equal to 10 acres, \$5,000.

The commission agrees that the potential for pollution, the complexity of technical review, and the need for routine compliance monitoring inspections is greater for non-residential (commercial, industrial, institutional, and multi-family residential) projects than for residential developments. The commission is therefore amending the fee schedule for the non-residential (commercial) classification as follows: less than 1 acre, \$2,000; 1 acre to less than 5 acres, \$3,000; 5 acres to less than 10 acres, \$4,000; 10 acres or greater, \$5,000. The commission also agrees with the comment to move schools, both public and private, from the residential to non-residential category and has amended the fee schedule to reflect this change. The change in fees will not significantly change the revenue generated by the program, and it is estimated (based on collections in FY 1996) that the maximum amount of new revenue generated by this change would be \$65,000 in any one year. It is not anticipated that the total incremental cost will increase total construction and developmental cost by a significant amount for any one project.

The SAWS suggested an additional category for single-family residential subdivision and parks (without public schools) from the proposed single-family residential dwellings, parks, and public school category. They commented that the fees should remain the same as the proposed fees unless the WPAP will use permanent pollution abatement structures. For plans that use a permanent pollution abatement structure, the applicant should be charged a minimum of \$2,000 for sites of less than one acre, \$3,000 for sites of 1 acre to less than 5 acres, \$4,000 for sites 5 acres to less than 10 acres, and \$5,000 for sites greater than 10 acres. An individual suggests that for single-family residential subdivisions, parks, public schools, and road construction the following acres size fees should be used to

generate revenue based on pollutant load, size of project, and difficulty of technical review: less than 5 acres, \$1,000; greater than or equal to 5 acres to 10 acres, \$2,000; greater than or equal to 10 acres to 25 acres, \$3,000; greater than or equal to 25 acres to fifty acres, \$4,000; and greater than or equal to 50 acres, \$5,000.

The commission disagrees with the commenters' proposed fee structures. All plans will be using best management practices to achieve water quality protection. Some will be temporary (such as silt fences for sediment control), some behavioral modification (such as education of workers on-site to use specific entrances to prevent soil from the site being carried to public roads and brochures distributed to home owners discussing prevention of nonpoint source pollution), and some will be permanent (such as impervious cover limits and sedimentation/filtration ponds). The fee is designed to defray the expense arising from reviewing a WPAP and for inspecting the construction and maintainance of all BMPs. The fee is tied to project size and potential impact to the aquifer and is not intend to affect the use or non-use of permanent pollution abatement practices.

The SAWS commented that HB 1016 allows the commission to impose fees for inspecting the construction and maintenance of regulated sites. They suggest that an annual or biennial inspection fee should be instituted for all sites with permanent pollution abatement measures to allow for the allocation of additional staff to conduct compliance inspections. They also state that the fee would act as a reminder to responsible parties that they have a continuing obligation to maintain their permanent pollution abatement measures. AGUA advocated a permit fee structure which accurately reflects the important regulatory work the commission carries out in the Edwards Chapter 213 program. AGUA states that the highest level of the City of San Antonio political and water board officials met in advance of the legislative session to work with the agency staff on a long-standing request to increase fees and the effectiveness of the Edwards rules program. This group worked with the entire Bexar County delegation to provide for the administrative authority to increase fees and expand the fee program to include long-term inspection and enforcement fees. The commenter expressed that AGUA was disappointed that the commission ignored the explicit wish of the electorate on issues of program fees and recommended that fees be implemented which will cover the cost of the Edwards Chapter 213 program at the application and enforcement stages.

The commission responds that HB 1016, 75th Legislative session, allows the commission to increase the maximum fee imposed from \$2,000 to \$5,000 on real estate development projects. Consistent with the fiscal note accompanying HB 1016, the commission has interpreted the new fee provisions to authorize only one fee to be imposed per application, which would allow the recovery of current program costs of \$911,250. The commission has therefore devised a fee schedule that assesses a fee ranging from \$500 to \$5,000, per project, depending on the size and use of land, with the maximum fee assessed on the largest areas or higher potentially contamination risk activities. The revenue generated by these fees will also be used, for inspecting the construction and maintenance of projects as authorized by HB 1016.

The SAWS commented that an annual report documenting the proper disposition of all Edwards program fees should be produced by the agency because HB 1016 state the fees "be

used only for the commission's Edwards Aquifer programs." They suggested that this document be given to the Governor, members of the Natural Resources Committee of the Texas House, members of the Natural Resources Committee of the Texas Senate, and be available for public distribution at the Austin and San Antonio regional offices.

The commission currently has a financial accounting system which tracks the receipt and disposition of all fees the agency uses for program activities. This information is available to all interested parties. When combined with information on costs of administering the Edwards Aquifer protection program, the financial data can be used track the expenditure of funds generated by the Edwards Program.

#### LEGAL AUTHORITY

These amended sections are adopted under Texas Water Code, §§5.103, 5.105, 26.011, and 26.341, and Texas Health and Safety Code, §361.024 and §366.012, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Codes and other laws. Additionally, Texas Water Code, §26.046 requires the commission to hold an annual public hearing to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution, §26.0461 allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules, §26.121 prohibits unauthorized discharges, and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality.

#### *§213.14. Fee Schedule.*

(a) Water Pollution Abatement Plans. For water pollution abatement plans and modifications to those plans, the application fee shall be based on the classification and total acreage of the site where regulated activities will occur as specified in Table 1.

Figure 1: §213.14(a)

(b) Organized sewage collection systems. For sewage collection system plans and modifications, the application fee shall be based on the total number of linear feet of all lines for which approval is sought. The fee shall be \$.50 per linear foot, with a minimum fee of \$500 and a maximum fee of \$5,000.

(c) Underground and aboveground storage tank facilities. For underground or permanent aboveground storage tank system facility plans and modifications, the application fee shall be based on the number of tanks or piping systems for which approval is sought. The fee shall be \$500 per tank or piping system, with a minimum fee of \$500 and a maximum fee of \$5,000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713922

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 14, 1997

Proposal publication date: July 8, 1997

For further information, please call: (512) 239-4640

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board

#### Chapter 363. Financial Assistance Programs

##### Subchapter A. General Provisions

The Texas Water Development Board (the board) adopts amendments to §363.33 and §363.42 concerning Financial Assistance Programs without changes to the proposed text as published in the September 5, 1997 *Texas Register* (22 TexReg 8924) and will not be republished. The amendments will allow adjustment of the amount of interest rate subsidy provided in fixed rate lending in the State Revolving Fund programs and correct a reference to the Development Fund Manager from the Development Fund Director.

Comments were received from the City of Houston objecting to the effect of the amendments relative to the City's needs. The City advocated a more comprehensive approach to the SRF capacity issues. The proposed rules have not been changed as a result of the City's comments. The Board is currently taking a comprehensive approach to this issue and the proposed amendments represent a first step to solution of this program's issues.

##### Formal Action by the Board

###### 31 TAC §363.33

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §15.605 which allows the board to adopt rules necessary for the State Revolving Fund, and §15.606 which requires the board to determine the lending rate for the State Revolving Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713751

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: November 5, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 463-7981

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##### Prerequisites to Release of State Funds

###### 31 TAC §363.42

The amendment is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §15.605 which allows the board to adopt rules necessary for the State Revolving Fund, and §15.606 which requires

the board to determine the lending rate for the State Revolving Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713752

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: November 5, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 463-7981

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### Chapter 371. Drinking Water State Revolving Fund

#### Board Action on Application

##### 31 TAC §371.52

The Texas Water Development Board (the board) adopts amendments to §371.52, concerning the Drinking Water State Revolving Fund, without changes to the proposed text as published in the September 5, 1997 *Texas Register* (22 TexReg 8925) and will not be republished. The amendments will allow adjustment of the amount of interest rate subsidy provided in fixed rate lending in the State Revolving Fund programs and correct a reference to the Development Fund Manager from the Development Fund Director.

Comments were received from the City of Houston objecting to the effect of the amendments relative to the City's needs. The City advocated a more comprehensive approach to the SRF capacity issues. The proposed rules have not been changed as a result of the City's comments. The Board is currently taking a comprehensive approach to this issue and the proposed amendments represent a first step to solution of this program's issues.

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and §15.6041 and §15.605 which provide the board authority to adopt rules for the Drinking Water State Revolving Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713753

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: November 5, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 463-7981

## Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (the board) adopts amendments to §375.52, concerning State Water Pollution Control Revolving Funds, without changes to the proposed text as published in the September 5, 1997 *Texas Register* (22 TexReg 8926) and will not be republished. The Texas Water Development Board (the board) further adopts an amendment to §375.72, concerning the State Water Pollution Control Revolving Fund, without changes to the proposed text as published in the September 19, 1997 *Texas Register* (22 TexReg 9439) and will not be republished. The amendments will allow adjustment of the amount of interest rate subsidy provided in fixed rate lending in the State Revolving Fund programs and correct references to the Development Fund Manager from the Development Fund Director.

Comments were received from the City of Houston objecting to the effect of the amendments relative to the City's needs. The City advocated a more comprehensive approach to the SRF capacity issues. The proposed rules have not been changed as a result of the City's comments. The Board is currently taking a comprehensive approach to this issue and the proposed amendments represent a first step to solution of this program's issues.

### Board Action on Application

#### 31 TAC §375.52

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §15.605 which allows the board to adopt rules necessary for the State Revolving Fund, and §15.606 which requires the board to determine the lending rate for the State Revolving Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713754

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: November 5, 1997

Proposal publication date: September 5, 1997

For further information, please call: (512) 463-7981



### Prerequisites to Release of Funds

#### 31 TAC §375.72

The amendment is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, §15.605 which allows the board to adopt rules necessary for the State Revolving Fund, and §15.606 which requires the board to determine the lending rate for the State Revolving Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713755

Carig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: November 5, 1997

Proposal publication date: September 19, 1997

For further information, please call: (512) 463-7981



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 81. Interaction with the Public

##### 37 TAC §81.79

The Texas Youth Commission (TYC) adopts an amendment to §81.79, concerning historically underutilized business participation, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9230).

The justification for amending the section is to make a correction.

The amendment corrects a misspelled word. There is no change to content.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713580

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: November 3, 1997

Proposal publication date: September 12, 1997

For further information, please call: (512) 424-6244



### Part XI. Texas Juvenile Probation Commission

#### Chapter 343. Standards for Juvenile Pre-adjudication Secure Detention Facility



### 37 TAC §§343.1, 343.2, 343.4-343.18

The Texas Juvenile Probation Commission adopts amendments to §§343.1, 343.2 and 343.4-343.18, concerning juvenile probation standards for juvenile pre-adjudication secure detention facilities, without changes to the proposed text as published in the May 13, 1997, issue of the *Texas Register* (22 TexReg 4179) and will not be republished.

The amendments are adopted in order to clarify juvenile probation standards and to increase public safety.

Adoption of these amendments will set minimum standards for facilities dealing with juvenile offenders.

The following public comments were received concerning §343:

Section 343.1 Definitions Tarrant County: spoke in opposition to "minimum contact". They realize the economic considerations but believe "they are very different populations and should have no contact." Tarrant Co. prefers that staff training of short term detention should be different than that of post adjudication. If total separation cannot be accomplished, then a definition of "minimum" is requested. Jefferson County: supports the language of minimum contact. ...."am concerned about the populations mixing. Yet, I think the standard is well done by advising to make plans around that with written policies that would govern that where you have minimum contact." Nueces County: supports language Bruce Wilson (Individual) - proposes adding the following underlined language to the definition: ".....or other individual who is accused of having committed an offense or violation of a state juvenile corrections agency rule of supervision and is awaiting....." This is in regards to parolees being held in detention centers for rule violations.

Section 343.2(a)(3)(4) Administration, Organization. Jefferson County: Spoke in support of language. Webb County: Question was answered about how the standard pertains to their specific configuration of their detention center.

Section 343.2(b)(2) reporting abuse. Harris County: Clarification is needed: "Does 24 hours include weekends and holidays? Does the abuse and neglect include allegations of police brutality or abuse of parents? What reporting methods will be required?" Jefferson County: Clarification needed in certain areas. Does abuse mean alleged abuse or confirmed abuse?

Section 343.4(1)- Personnel Webb County:" Would there be any guidelines as to what would be considered emotionally suitable by the commission?"

Section 343.4(4) Salaries Dallas: Since recent language has changed giving ultimate authority of setting salaries to the commissioners court, Dallas County asks that modifications be made in that regard. Dallas (Intergovernmental Affairs) States that SB 1395 only recodified and put into statute that commissioners court has always had the authority to set the salaries in detention centers. Recommend that standards reflect SB 1395.

Section 343.5(2) Training and Staff Development Tarrant County: supports new employees receiving 40 hours prior to taking assignments. Grayson County: encourages the deletion of the sentence : "Detention Officers must have six months (full time) for 890 hours (part time) of on the job....." Grayson County argues that it creates an operational hardship on smaller detention centers due to the high turn over in detention which in turn leads to long periods of time where there are no officers that obtain the 980 hours of training. "The only

way would be to create two or three additional apprentice' or in-training positions to assure that detention officer positions are timely filled." Grayson County further suggests that TJPC create a temporary certification in Section 343.5(2). This would allow a temporarily certified officer (with 40 hours orientation) to be counted in the detention officer ratio.

Section 343.5(3) Certification Travis County: recommends changing 980 hours to 1040 hours. (6 actual months). Also they do not recommend having to "certify" part time employees, but still ensure that they maintain appropriate number of hours mandated.

Section 343.6(1) Data Collection Jefferson County: Clarification needed on attempted escapes, attempted suicides and what kind of injuries should be reported. Travis County: What type of injuries should be addressed for documentation?

Section 343.8(a)(5)(b) Physical Plant Jefferson County: Suggests that the semi-annual inspections should be left in the language.

Section 343.8(a)(6) Physical Plant Jefferson County: States concern over the deletion of : "Written policies shall be followed when you are over capacity." States that it hampers counties who only have 3-4 kids over as opposed to those counties who are chronically over capacity. Recommend that the language be kept in or possibly give a little room for over capacity (ie. 20% recommended by ACA). Dallas County: Strongly opposes proposed language. States that language implies a "No Vacancy" sign. "This is totally unrealistic. The flow of criminal behavior in our community is out of our control and to place this type of requirement on detention centers is not acceptable." "Does the TJPC want to go on record as allowing serious criminal offenders out on the street?" Harris County: Harris County finds this standard unrealistic because it does not allow for overpopulation. "Community safety concerns require certain juveniles to be securely housed pending their adjudication hearing. Overpopulation is not only expected from time to time, it is currently the norm for many facilities. Gregg County: Is in opposition to the deletion of the language which allows for overpopulation given their is a policy to reduce capacity. "This language prohibits a departments ability to obtain any type of variance for capacity from the Commission or their Juvenile Board." "If there are problems with enforcing these temporary waivers, modify the language to include consequences for non-compliance with the temporary waiver." Lubbock County: Disagrees with the language removing the language which allows for a written policy to reduce capacity. "This language prohibits the department's ability to obtain any type of waiver while re-rating for capacity from the Commission or the department' juvenile board. " "If there are problems with enforcing these temporary Waivers, modify the language to include consequences for noncompliance with a temporary Waiver."

Section 343.8(b)(1) - Physical Plant Lubbock County: States that "if any county in this state is allowed to have open bay short-term beds, every facility in the state should also be allowed to do so as well." "If this section remains as is, it is my opinion that this will be one of the most inequitable and biased acts today ever mandated by TJPC. Dallas County: Supports Multiple-occupancy housing for several reasons: 1. It has worked in Dallas in creating a behavioral incentive for kids in detention. 2. The post adjudication already allow for it. 3. Financial implication. Furthermore, dorm settings not to exceed 24 beds, and that there be a 1:5 ratio in terms of toilets, lavatories, basins

.... Jefferson County: supports the idea of single occupancy in detention centers. Bell County: has a facility which they believe should be allowed for multiple occupancy. "If the wording were amended to just allow for facilities designed' instead of saying juvenile detention facilities', it would allow us to utilize that facility. The Bell County center was a secure residential facility prior to September 1, 1996.

Section 343.8(B)(2) Isolation Rooms Travis County: Recommends that "or medical personnel" be added after detention officer. The rationale is such that if medical personnel is their to check or evaluate a child in isolation, then it should take the place of a regular check by a detention officer.

Section 343.8(b)(12) Physical Plant Jefferson: In newly constructed facilities, language should be added to include negative air flow system for kids with a contagious sickness.

Section 343.9(b)(1)- Security and Control Jefferson: Clarification needed on the fact that the language states to have a classification plan, but does not state that you have to use it.

Section 343.17(1) Programs Nueces County: States that at times such as summer and Christmas there is no educational services provided in detention. Stated that education should be offered at all times. "I don't know whether it's possible to cause the school districts to provide that sort of thing or to have the money to come directly to us in some way to make it possible for us to provide that kind of educational services all the time."

After TJPC staff and board members reviewed oral and written comment, the TJPC board decided to adopt the amendments without any changes to the proposed text. The board discussed issues such as overcrowding and the mixing of pre- and post-adjudication populations, and felt that adopting the proposed amendments without changes would preserve the health and safety components of the TJPC standards. Furthermore, the consensus of the field review staff supported the board's recommendations.

The amendments are adopted under Texas Human Resource Code, §§141.001, 141.041, and 141.042, which provide the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713680

Lisa Capers

General Counsel

Texas Juvenile Probation Commission

Effective date: November 4, 1997

Proposal publication date: May 13, 1997

For further information, please call: (512) 424-6682



### 37 TAC §343.3

The Texas Juvenile Probation Commission adopts the repeal of §343.3, concerning fiscal management, without changes to the proposed text as published in the May 13, 1997, issue of the *Texas Register* (22 TexReg 4185) and will not be republished.

The repeal is adopted in order to clarify juvenile probation standards.

Adoption of this repeal will simplify juvenile probation standards by eliminating language that appears under other sections in the standards.

No public comments regarding repeal of this section were received.

The repeal is adopted under Texas Human Resource Code, §§141.001, 141.041, and 141.042, which provide the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713681

Lisa Capers

General Counsel

Texas Juvenile Probation Commission

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Proposal publication date: May 13, 1997

For further information, please call: (512) 424-6682



## Chapter 344. Standards for Juvenile Post-adjudication Secure Correctional Facilities

### 37 TAC §§344.1-344.13, 344.15-344.16

The Texas Juvenile Probation Commission adopts amendments to §§344.1-344.13 and 344.15-344.16, concerning juvenile post-adjudication secure correctional facilities, without changes to the proposed text as published in the May 13, 1997, issue of the *Texas Register* (22 TexReg 4185) and will not be republished.

The amendments are adopted in order to clarify juvenile probation standards and to increase public safety.

Adoption of these amendments will set minimum standards for facilities dealing with juvenile offenders.

The following public comments were received concerning §344:

Section 344.7(b)(2)(B) - Physical Plant. Bell County: stated support of language because it allows them to mix populations in the classroom. Galveston County: Would like clarification on what is minimum.

Section 344.8(a)(2)(D)- Security and Control. Orange County Sheriff Department: Suggests that language be made to state "shall be examined and treated if necessary." He states that it could get costly and that in his experience as a law enforcement officer, he has not known anyone to have needed medical attention after being sprayed with mace.

Section 344.16(a) Programs. Nueces County: Would like to see education provided all year. In public comment, both Dallas County and Harris County requested clarification of Contract requirements versus Statutory language. They both argue that the contract implies that Counties which do not follow TJPC Standards for detention and post-adjudication are not eligible

to receive state funding. They further state current provision in our contracts contradicts state statute which allows certification under TJPC or ACA Standards.

After TJPC staff and board members reviewed oral and written comment, the TJPC board decided to adopt the amendments without any changes to the proposed text. The board discussed issues such as overcrowding and the mixing of pre- and post-adjudication populations, and felt that adopting the proposed amendments without changes would preserve the health and safety components of the TJPC standards. Furthermore, the consensus of the field review staff supported the board's recommendations.

The amendments are adopted under Texas Human Resource Code, §§141.001, 141.041, and 141.042, which provide the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Capers

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Texas Juvenile Probation Commission

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## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part XII. Texas Board of Occupational Therapy Examiners**

#### **Chapter 362. Definitions**

##### **40 TAC §362.1**

The Texas Board of Occupational Therapy Examiners adopts an amendment to §362.1, concerning Definitions, with changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6848).

Changes were made to the proposed definitions of "Provisional License", "Regular License", and "Temporary License". The changes are not substantive, but clarify that the definitions of the various licenses refer to licenses issued by TBOTE, without implying a residency requirement.

This amended section is being adopted to clarify that Texas licensure is the critical factor in determining who may practice Occupational Therapy in Texas and remove unnecessary references and connections to the national body that administers examinations in the field of occupational therapy.

This amended section does the following:

1. Removes the requirement that persons holding regular or provisional licenses must be certified by the National Board for Certification in Occupational Therapy (NBCOT). Licensees must

pass the national examination, but need not maintain national certification.

2. Provides definitions of "Licensed Occupational Therapist", ("LOT") and "Licensed Occupational Therapy Assistant", ("LOTA") as terms that may be used only by persons holding appropriate regular or provisional licenses in Texas, and who may practice occupational therapy or represent themselves as occupational therapists or assistants with full rights.

3. Modifies the definitions of "Occupational Therapist, Registered (OTR)" and "Certified Occupational Therapy Assistant (COTA)" as alternate terms for persons holding regular or provisional licenses in Texas, and making the licensee responsible for meeting any other qualifications for using those terms.

4. Changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". These changes are consistent with the addition of the new terms described in 1 and 2.

5. References to "NBCOT examination", "certification examination", and "national examination" are changed to "Examination". "Examination" in turn is redefined as that required by the act and, currently, as the initial certification examination given by NBCOT. These changes make no change in the requirements for examination or licensure, but simplify reference to the examination.

6. The definition of "practice" has been modified to clarify that only persons holding valid licenses may practice Occupational Therapy in Texas.

Comments were received regarding amendment of this section from individuals. Following is a summary of those comments:

1. Define the right to use "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" and "COTA" in the same language as that used in the original AOTCB petition for certification. The commenter felt this would assure all current OTRs and COTAs the right to use the terms. One commenter

2. Authorize the terms "Occupational Therapist, Licensed", ("OT/L") and "Occupational Therapy Assistant, Licensed", ("OTA/L"), rather than "Licensed Occupational Therapist" ("LOT") and "Licensed Occupational Therapy Assistant" ("LOTA"). Three written commenters, several informal verbal commenters.

3. Definitions for Regular, Provisional and Temporary licenses use the language "in the state of Texas" in a way that may be confusing. It appears to refer to residents only. Two commenters

4. Expressed support for any action by the board to assure that licensed individuals could practice without paying additional fees to a national organization. One commenter.

Comments for and against the rule were made by individuals.

This agency responds:

1. The rule changes are designed to remove TBOTE from issues concerning the right to use the terms "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" and "COTA". As long as an individual holds a

valid Texas license, the board is not concerned with that individual's other right to use the terms "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA". Therefore, the board did not change the definitions of "OTR" and "COTA" to reflect any other standards.

2. The Texas OT Practice Act specifically mentions the terms "LOT" and "LOTA" and prohibits non-licensed persons from using those terms. There is no question of the Board's right to limit the use of those terms to persons holding licenses. Therefore, the Board retained the use of the terms "LOT" and "LOTA", rather than "OT/L" and "OTA/L", which are not specifically mentioned in the Act.

3. Definitions of Regular, provisional and temporary licenses were modified to clarify that the term refers to a license issued by TBOTE, removing the language that seems to refer to residents only.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

#### *§362.1. Definitions.*

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Act - The Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851.

AOTA - American Occupational Therapy Association.

Applicant - A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

Application Review Committee- Reviews and makes recommendations to the board concerning applications which require special consideration.

Board - The Texas Board of Occupational Therapy Examiners (TBOTE).

Certified Occupational Therapy Assistant, (COTA)- An alternate term for a Licensed Occupational Therapy Assistant. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR or LOT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

Class A Misdemeanor - An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) a fine not to exceed \$3,000;

(B) confinement in jail for a term not to exceed one year;

or

(C) both such fine and imprisonment (Vernon's Texas Codes Annotated, Penal Code, §12.21).

Close Personal Supervision - Implies direct, on-site contact whereby the supervising OTR, LOT, COTA or LOTa is able to respond immediately to the needs of the patient.

Complete Application - Notarized application form with photograph, license fee, and all other required documents.

Complete Renewal - Contains renewal fee, continuing education record card (if applicable), home/work address(es) and phone number(s), and supervision form (if applicable).

Consultation - The provision of occupational therapy expertise to an individual or institution. This service may be provided on a one time only basis or on an ongoing basis.

Continuing Education Committee - Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

Continuing Supervision, OT - Includes frequent, face-to-face meetings which occur at the worksite of the temporary licensee and regular interim communication between the supervising OTR or LOT and the temporary licensee by telephone, written report, or conference. The contact must occur at the worksite of the temporary licensee at minimum on a weekly basis.

Continuing Supervision, OTA- Includes frequent, face-to-face meetings which occur at the worksite of the temporary licensee and regular interim communication between the supervising OTR or LOT and the temporary licensee by telephone, written report, or conference. The contact must occur at the worksite of the temporary licensee at minimum on a weekly basis. Sixteen hours of supervision per month must be documented and can include the minimum weekly supervisory contacts made at the worksite of the temporary licensee.

Coordinator of Occupational Therapy Program- The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

Direct Service - Refers to the provision of occupational therapy services to individuals to develop, improve, and/or restore occupational functioning.

Evaluation - Refers to a process of determining an individual's status for the purpose of determining the need for occupational therapy services or for implementing a treatment program.

Examination - The Examination as provided for in §17 of the Act. The current Examination is the initial certification Examination given by the National Board for Certification in Occupational Therapy (NBCOT).

Executive Council - The Executive Council of Physical Therapy and Occupational Therapy Examiners.

Executive Director - The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

First Available Examination - Refers to the first scheduled Examination after successful completion of all educational requirements.

General Supervision - Includes frequent, weekly face-to-face meetings at the worksite and regular interim communication between the OTR or LOT and the COTA or LOTa by telephone, written report, or conference.

Investigation Committee - Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

Investigator - The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

License - Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

**Licensed Occupational Therapist (LOT)** - A person who holds a valid regular or provisional license to practice or represent self as an occupational therapist in Texas.

**Licensed Occupational Therapy Assistant (LOTA)** - A person who holds a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and who is required to practice under the general supervision of an OTR or LOT.

**Medical Condition** - A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status where prudence and custom require the services of a physician.

**Monitored Services** - The checking on the status/condition of students, patients, clients, equipment, programs, services, and staff in order to make appropriate adjustments and recommendations. Minimum contact for the purpose of monitoring will be one time a month.

**NBCOT (formerly AOTCB)** - National Board for Certification in Occupational Therapy (formerly American Occupational Therapy Certification Board).

**Non-Medical Condition** - A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psycho-social dysfunction, or other such conditions which does not require the routine intervention of a physician.

**Occupational Therapist (OT)** - A person who holds a Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

**Occupational Therapist, Registered (OTR)** - An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

**Occupational Therapy** - The evaluation and treatment of individuals whose ability to perform life roles is threatened or impaired by developmental deficits, the aging process, environmental deprivation, sensory impairment, physical injury or illness, or psychological or social dysfunction. Occupational therapy utilizes therapeutic goal-directed activities to evaluate, prevent, or correct physical, mental, or emotional dysfunction or to maximize function in the life of the individual. Such activities are applied in the treatment of patients on an individual basis, in groups, or through social systems, by means of direct or monitored treatment or consultation.

**Occupational Therapy Assistant (OTA)** - A person who holds a Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

**OT Aide or OT Orderly** - A person who aids in the practice of occupational therapy and whose activities require on-the-job training and on-site supervision by an OTR, LOT, COTA or LOTA.

**Physician** - An individual licensed by the Texas State Board of Medical Examiners, e.g., Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.).

**Place(s) of Business** - Any facility in which a licensee practices.

**Practice** - Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

**Provisional License** - A license issued by TBOTE to an applicant who holds a valid license in good standing from another state, District of Columbia, or territory of the United States requesting licensure; or a license issued to an applicant who has passed the Examination and who has been employed as an OTR, LOT, COTA or LOTA within five years of the receipt date of current, complete application for licensure with TBOTE.

**Recognized Educational Institution** - An educational institution offering a course of study in occupational therapy that has been accredited or approved by the American Occupational Therapy Association.

**Regular License** - A license issued by TBOTE to an applicant who has met the academic requirements and who has passed the Examination.

**Rules** - Refers to the TBOTE Rules.

**Screening** - A process or tool used to determine a potential need for occupational therapy interventions. This information may be compiled using observation, medical or other records, the interview process, self reporting, and/or other documentation.

**Temporary License** - A license issued by TBOTE to an applicant who meets all the qualifications for a license except taking the first available Examination after completion of all education requirements; or a license issued to an applicant who has passed the Examination but has not been employed as an OTR, LOT, COTA or LOTA for five years or more from the receipt date of current, complete application for licensure with TBOTE.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



## Chapter 365. Types of Licenses

### 40 TAC §365.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §365.1, concerning Types of Licenses, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6849).

This amended section is being adopted to clarify licensure requirements for person who have not recently practiced and to reflect the availability of new titles for licensees.

This amended section does the following:

1. Requires that persons who do not apply for licensure nor practice in another state for more than 12 months after taking the examination must be referred to the application review committee.
2. Shortens all references to "certification examination" or "NBCOT examination" to simply "Examination".

3. Changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John P. Maline

Executive Director

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For further information, please call: (512) 305-6900



## Chapter 369. Display of Licenses

### 40 TAC §369.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §369.3, concerning Use of Titles, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6851).

This amended section is being adopted to identify professional titles which may be used by TBOTE licensees and may not be used by other persons.

This amended section does the following:

1. Clarifies that only individuals holding valid Texas licenses may use certain Occupational therapy terms
2. Allows for the use of the terms "Licensed Occupational Therapist", ("LOT") and "Licensed Occupational Therapy Assistant", ("LOTA") by persons holding regular or provisional licenses in Texas.
3. Provides that persons who use the terms "OTR" or "COTA" are responsible for ensuring that they may any additional qualifications (other than Texas licensure) for those terms.
4. Prohibits person who do not hold occupational therapy licenses from using any terms implying that they are qualified to provide occupational therapy in Texas.

Comments were received regarding amendment of this section:

1. Authorize the terms "Occupational Therapist, Licensed", ("OT/L") and "Occupational Therapy Assistant, Licensed", ("OTA/L"), rather than "Licensed Occupational Therapist" ("LOT") and "Licensed Occupational Therapy Assistant" ("LOTA"). Three written commenters, several informal verbal commenters.

2. Expressed support for any action by the board to assure that licensed individuals could practice without paying additional fees to a national organization. One commenter.

Comments for and against the rule were made by individuals.

This agency responds:

The Texas OT Practice Act specifically mentions the terms "LOT" and "LOTA" and prohibits non-licensed persons from using those terms. There is no question of the Board's right to limit the use of those terms to persons holding licenses. Therefore, the Board retained the use of the terms "LOT" and "LOTA", rather than "OT/L" and "OTA/L", which are not specifically mentioned in the Act.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

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## Chapter 370. License Renewal

### 40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §370.1, concerning License Renewal, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6852).

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John P. Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
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For further information, please call: (512) 305-6900



## Chapter 371. Inactive/Retiree Status

### 40 TAC §371.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §371.1, concerning Inactive Status, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6852).

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John P. Maline  
Executive Director  
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### 40 TAC §371.2

The Texas Board of Occupational Therapy Examiners adopts an amendment to §371.2, concerning Retiree Status, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6853).

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA".

This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section:

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Chapter 372. Provision of Services

### 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §372.1, concerning Provision of Services, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6853).

This amended section is being adopted to require that the entire process of occupational therapy be under the control of licensed OT practitioners.

This amended section requires the following:

1. Screening and evaluation must be conducted by licensed OT practitioners.
2. OT must be provided in accord with a plan of care developed by an OTR or LOT.
3. The plan of care may be interdisciplinary, but the OT components must be clearly identified.
4. Only OT licensees or persons trained by OT licensees may carry out an OT Plan of Care.
5. An OTR or LOT may discharge a patient from OT services.

In addition, various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" are changed to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John P. Maline

Executive Director

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For further information, please call: (512) 305-6900



## Chapter 373. Supervision

### 40 TAC §373.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §373.1, concerning Supervision, with changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6854). In subsection (b)(1)(D), the placement of a quotation mark is changed from the proposed version.

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas. For simplicity, references to the "COTA/OTA Supervisory Log" are changed to "Occupational Therapy Supervisory Log".

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

#### §373.1. Supervision.

(a) Occupational Therapists, Registered or Licensed Occupational Therapists (OTRs or LOTs) are fully responsible for the planning and delivery of occupational therapy services.

(1) The supervising OTR or LOT has overall responsibility for providing the supervision necessary to protect the health and welfare of the consumer receiving OT services from a COTA, LOTa, temporary licensee, or OT aide or orderly.

(2) OTRs or LOTs must ensure that tasks appropriate for a COTA, LOTa or temporary licensee are not delegated to persons without current licenses.

(3) However, this does not absolve the COTA, LOTa or temporary licensee from his or her professional responsibilities.

#### (b) Supervision of COTAs.

(1) The OTR or LOT shall delegate responsibilities to the COTA or LOTa that are within the scope of his or her training.

(2) A COTA or LOTa shall provide occupational therapy services only under the general supervision of a licensed OTR or LOT. (See Chapter 362 of this title (relating to Definitions))

(A) A minimum of eight hours of supervision per month for full time COTAs or LOTas must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. COTAs and LOTas employed part time shall prorate the required supervision.

(i) The "Occupational Therapy Supervision Log" must be kept by the COTA or LOTa and a copy of this form must be maintained by the facility where the COTA or LOTa provides services. One "Occupational Therapy Supervision Log" must be completed for each separate employer.

(ii) The "Occupational Therapy Supervision Log" must be submitted to TBOTE with the COTA's or LOTa's renewal application.

(B) The manner of supervision shall depend on the treatment setting, patient/client caseload, and the competency of the COTA or LOTa as determined by the supervising OTR or LOT.

(C) The supervising OTR or LOT need not be physically present or on the premises at all times.

(3) A COTA or LOTa may initiate and perform the screening process and collect information for the OTR's or LOT's review. The OTR or LOT is responsible for determining if intervention is needed and if a physician's referral is required for evaluation and/or occupational therapy intervention.

(4) An OTR or LOT is responsible for completing the patient's evaluation/assessment. The supervising OTR or LOT may delegate any evaluative task to a COTA or LOTa that the OTR or LOT and COTA or LOTa agree is within the competency level of that COTA or LOTa.

(5) An OTR or LOT is responsible for developing and modifying the patient's treatment plan. The treatment plan must include the following components: goals, interventions/modalities, frequency, and duration.

(6) An OTR or LOT assumes responsibility for the patient's discharge summary. The supervising OTR or LOT may delegate any discharge-related task to a COTA or LOTa that the OTR or LOT and COTA or LOTa agree is within the competency level of that COTA or LOTa.

(7) It is the responsibility of the OTR or LOT and the COTA or LOTa to ensure that all documentation prepared by the COTA or LOTa which becomes part of the patient's/client's permanent record is co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initiated by the OTR or LOT and signed at the bottom of each page.

(8) These rules shall not preclude the COTA or LOTa from responding to emergency situations in the patient's condition which require immediate action.

#### (c) Supervision of an OT Aide or OT Orderly.

(1) When an OTR, LOT, COTA and/or LOTa delegates OT tasks to an aide or orderly, the OTR, LOT, COTA and/or LOTa is responsible for the aide's actions during patient contact on the delegated tasks. The licensee is responsible for ensuring that the aide is adequately trained in the tasks delegated.

(2) An OTR, LOT, COTA and/or LOTa using OT Aide or OT Orderly personnel to assist with the provision of occupational



therapy services must provide close personal supervision in order to protect the health and welfare of the consumer. (See Chapter 362 of this title (relating to Definitions))

(3) Delegation of tasks to OT Aides or OT Orderlies.

(A) The primary function of an OT Aide or OT Orderly functioning in an occupational therapy setting is to perform designated routine tasks related to the operation of an occupational therapy service. An OTR, LOT, COTA and/or LOTA may delegate to an OT Aide or OT Orderly only specific tasks which are not evaluative or recommending in nature, and only after insuring that the OT Aide or OT Orderly has been properly trained for the performance of the tasks. Such tasks include, but are not limited to:

- (i) routine department maintenance;
- (ii) transportation of patients/clients;
- (iii) preparation or setting up of treatment equipment and work area;
- (iv) assisting patients/clients with their personal needs during treatment;
- (v) assisting in the construction of adaptive equipment and splints;
- (vi) clerical, secretarial, administrative activities;
- (vii) carrying out a predetermined segment or task in the patient's care.

(B) The OTR, LOT, COTA and/or LOTA shall not delegate to an OT Aide or OT Orderly:

- (i) performance of occupational therapy evaluative procedures;
  - (ii) initiation, planning, adjustment, modification, or performance of occupational therapy procedures requiring the skills or judgment of an OTR, LOT, COTA or LOTA;
  - (iii) making occupational therapy entries directly in patients' or clients' official records;
  - (iv) acting on behalf of the occupational therapist in any matter related to occupational therapy which requires decision making or professional judgment.
- (d) Supervision of an occupational therapist or an occupational therapy assistant with a temporary license.

(1) Temporary Licenses:

(A) A person issued a temporary occupational therapy license must practice occupational therapy under the continuing supervision of an OTR or LOT. (See Chapter 362 of this title (relating to Definitions))

(B) A minimum of 16 hours of supervision per month for full time OTAs must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. OTAs employed part time shall prorate the required supervision. If the OTA is employed less than 20 hours per week, a minimum of eight hours of supervision is required per month. The "Occupational Therapy Supervision Log" must be kept by the OTA, and a copy of this form must be maintained by the facility where the OTA provides services. One "Occupational Therapy Supervision Log" must be completed for each separate employer.

(C) The temporary licensee will certify to the board as to the name, license number, and address of his or her supervisor on a form provided by the board during the application process.

(D) The temporary licensee must notify the board within 15 days of a change in the OTR or LOT supervisor.

(E) The temporary licensee shall not supervise an occupational therapy student, an occupational therapy assistant, or an OT Aide or OT Orderly.

(F) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file must be co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initialed by the OTR or LOT and signed at the bottom of each page.

(2) Provisional Licenses:

(A) OTRs and LOTs with provisional licenses are excluded from supervision requirements.

(B) COTAs and LOTAs with provisional licenses will require general supervision by a licensed OTR or LOT.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713645

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: November 4, 1997

Proposal publication date: July 22, 1997

For further information, please call: (512) 305-6900



## Chapter 374. Disciplinary Actions/Complaints/ Code of Ethics

### 40 TAC §374.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §374.1, concerning Disciplinary Actions, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6856).

This amended section is being adopted to improve the board's disciplinary action process.

This amended section makes the following changes:

1. Allows the board to refuse to issue a license as a part of its overall disciplinary action function.
2. Reference to "NBCOT examination", is changed to "Examination". "Examination" This change makes no change in the requirements for re-licensure of a person whose license was revoked, but simplifies reference to the examination.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713646

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: November 4, 1997

Proposal publication date: July 22, 1997

For further information, please call: (512) 305-6900



## Chapter 376. Registration of Facilities

### 40 TAC §376.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §376.1, concerning Definitions, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6856).

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713647

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: November 4, 1997

Proposal publication date: July 22, 1997

For further information, please call: (512) 305-6900



### 40 TAC §376.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §376.3, concerning Requirements for Registration Application, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6857).

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding amendment of this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713648

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: November 4, 1997

Proposal publication date: July 22, 1997

For further information, please call: (512) 305-6900



### 40 TAC §376.4

The Texas Board of Occupational Therapy Examiners adopts an amendment to §376.4, concerning Requirements for Registered Facilities, without changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6857).

This amended section is being adopted to ensure consistency in the use of professional titles throughout the rules.

This amended section changes various references to "Occupational Therapist, Registered", "OTR", "Certified Occupational Therapy Assistant" or "COTA" to include those terms and the newly authorized terms "Licensed Occupational Therapist", "LOT", "Licensed Occupational Therapy Assistant" or "LOTA". This change reflects the availability of both titles for persons holding regular or provisional licenses in Texas.

No comments were received regarding the amendment to this section.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713649

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: November 4, 1997

Proposal publication date: July 22, 1997  
For further information, please call: (512) 305-6900

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## Part XX. Texas Workforce Commission

### Chapter 815. Unemployment Insurance

#### 40 TAC §815.9

The Texas Workforce Commission adopts an amendment to §815.9, concerning the electronic transmission by certain employers of payments of their state unemployment tax due each quarter, without changes to the proposed text as published in the July 25, 1997, issue of the *Texas Register* (22 TexReg 6934).

Texas Government Code, §404.095(c) and (f), enable state agencies to promulgate rules to require person(s) submitting funds to a state agency to make such payments via electronic transfer. The amended section lowers the threshold amount of the requirement to transmit payments electronically to the comptroller to \$250,000 annually from \$500,000, requires that all amounts due from qualifying employers be transferred via electronic transfer, and permits employers who do not meet the qualifying criteria to voluntarily pay via electronic transfer.

The amendment will require an employer or other entity, including agents paying on behalf of multiple employers, which paid contributions in the preceding state fiscal year of \$250,000 or more, and which is reasonably anticipated to do the same in the current fiscal year, to transfer payment amounts of contri-

butions by electronic funds transfer on or before the date the contributions are due. Except as otherwise provided in this subsection, the amendment would also permit employers, including agents, to voluntarily transfer payment of contributions by electronic funds transfer on or before the date the contributions are due.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with authority to adopt rules necessary to promote the purposes of the Act, and Texas Government Code, §404.095(c) and (f), which authorizes the Texas Workforce Commission to promulgate rules to require person(s) submitting funds to a state agency to make such payments via electronic transfer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713666

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: November 4, 1997

Proposal publication date: July 25, 1997

For further information, please call: (512) 463-8812

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# TABLES & GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

# OPEN MEETINGS

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Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

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## **Texas State Board of Public Accountancy**

Thursday, October 30, 1997, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Continuing Professional Education Committee

### **AGENDA:**

A. Consideration of proposals from the National Association of State Boards of Accountancy. A representative has been invited to answer questions regarding:

1. A Roster of Texas CPE Sponsors
2. CPE Quality Assurance Service

B. Consideration of request by W.B. Cargill, Ph.D., CPA, to provide the ethics course on the Internet

C. Consideration of ethics courses:

1. Charles F. Hobbs, CPA; Course- "Ethical Considerations for CPAs"
2. Tom Watson, Ph.D., O.D. Systems; Course- "Ethical and Professional Conduct: A Review of the Rules"
3. Nita J. Clyde, Ph.D., CPA; Two-hour course
4. Ken Reisor: Two-hour course

D. Consideration of the November pilot study on validating competencies in industry and attestation.

E. Consideration of referral from Rules committee to consider limiting CPE credits earned by self-study

F. Review of request from Scott Albosta, CPA, to accept courses as technical CPE credit

G. Consideration to amend Board Rule 523.32 — Ethics Course

H. Review of dates of next meeting

Contact: Paul Gavia, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 305-7845.

Filed: October 21, 1997, 4:19 p.m.

TRD-9714006

## **State Office of Administrative Hearings**

Monday, November 3, 1997, 1:00 p.m.

1700 North Congress Avenue

Austin

Utility Division

### **AGENDA:**

A Prehearing conference is scheduled for the above date and time in:

SOAH Docket Number 473-97-1849 — Petition of the UNITED STATES DEPARTMENT OF THE NAVY For a Declaratory Ruling that The Navy and Air Force be Declared Wholesale Customers for Purposes of Purchase of Electricity for Four Designated Bases Located Within the State of Texas. (PUC DOCKET NO. 17180.)

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: October 15, 1997, 2:36 p.m.

TRD-9713687

## **Texas Agricultural Experiment Station**

Monday, October 27, 1997, 10:00 a.m.

Room E2.018, State Capitol

Austin

Feed and Fertilizer Control Service Advisory Task Force

### **AGENDA:**

Review Feed and Fertilizer control Service budget and respond to Task Force questions. Receive reports from the Texas Department of Agriculture and the Texas Department of Health regarding their affiliation with the Feed and Fertilizer Control Service. Establish next Task Force meeting date.

Contact: Frank E. Gilstrap, Administration Building, Room 113, College Station, Texas 77843-2147, (409) 845-7980.

Filed: October 20, 1997, 11:19 a.m.

TRD-9713924

Friday, October 31, 1997, 10:00 a.m.

Room 308, Rudder Tower, Texas A&M University

College Station

Texas Equine Research Account Advisory Committee

**AGENDA:**

Receive updates on preparations for 1998 and 1999 Annual conferences. Hear status of racing at Texas tracks and receive updates from breed associations. Conduct election of officers for 1998. Review and rank research proposals submitted for funding consideration and present recommendations for funding to the Director of the Texas Agricultural Experiment Station.

Contact: Frank E. Gilstrap, College Station, Texas 77843-2147, (409) 845-7980.

Filed: October 20, 1997, 11:19 a.m.

TRD-9713923

## **Texas Bond Review Board**

Thursday, October 23, 1997, 10:00 a.m.

Clements Building, Committee Room Five, 300 West 15th Street

Austin

**AGENDA:**

I. Call to Order

II. Approval of Minutes

III. Consideration of Proposed Issues

A. Midwestern State University — lease purchase of laboratory, clinical and scientific equipment

B. Texas Department of Housing and Community Affairs

Single Family Mortgage Revenue Bonds, 1997 Series D

Single Family Mortgage Revenue Refunding Bonds, 1997 Series E

Taxable Single Family Mortgage Revenue Bonds, 1997 Series F

C. Texas Veterans Loan Board — Veterans' Housing Assistance Program, Fund II Series 1997A Bonds

D. Texas Veterans Land Board- Veterans' Housing Assistance Program, Fund II Series 1997B Taxable Bonds

E. Texas Veterans Land Board- Veterans' Land Bonds, Series 1998

F. Texas Public Finance Authority- General Obligation Refunding Bonds, Series 1997

G. Texas Public Finance Authority — Building Revenue and Revenue Refunding bonds, Series 1997A and B

IV. Other Business

A. Approval of memorandum of understanding between the Texas Bond Review Board and the Texas Department of Housing and Community Affairs.

B. Designation of authority to approve vouchers for submission to Comptroller of Public Accounts.

C. Possible schedule changes for future meeting dates

V. Adjourn.

Contact: Jose Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: October 15, 1997, 3:36 p.m.

TRD-9713691

Wednesday, October 29, 1997, 10:30 a.m.

Clements Building, Committee Room Five, 300 West 15th Street, Fifth Floor

Austin

1998 Lottery for Allocation of State Ceiling

**AGENDA:**

I. Welcome and Opening Remarks

II. Explanation of Lottery Process

III. First Lottery- to determine placement of applications in line for reservation

IV. Break (15 minutes)

V. Second Lottery — to determine reservation dates for initial allocation reservations.

Contact: Jeanne Talerico, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 475-4803.

Filed: October 22, 1997, 9:13 a.m.

TRD-9714022

## **State Cemetery Committee**

Monday, October 27, 1997, 11:30 a.m.

909 Navasota Street

Austin

**AGENDA:**

I. Call to Order; II. Roll Call; III. Organization and structure of the State Cemetery Committee; IV. Introduction of State Cemetery Staff; V. Introduction of State Cemetery Committee Members; VI. Discussion of draft State Cemetery rules; VII. Consideration and potential action on Applications for Burial in the State Cemetery; VIII. Consideration and potential action on Cenotaph Requests, Tree Removal Request, and Requests for Reinternment; IX. Discussion of Program Issues; X. Consideration and potential action on appointments of General Counsel and Committee Clerk for State Cemetery Committee; XI. Executive Session to consider personnel matters pursuant to the provisions of Texas Government Code §551.074; XII. Set Next Committee Meeting Date; XIII. Adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, also non-English speaking persons who may need assistance are requested to contact Christine Anderson at (512) 463-6600 two working days prior to the meeting so that appropriate arrangements may be made.

Contact: Ann Dillon 1711 San Jacinto Boulevard, Austin, Texas 78701, (512) 463-3960.

Filed: October 20, 1997, 3:04 p.m.

TRD-9713951

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**Coastal Coordinating Council (CCC)**

Friday, October 31, 1997, 1:30 p.m.

Stephen F. Austin Building, Room 831, 1700 North Congress Avenue  
Austin

Executive Committee

**AGENDA:**

I. Call to Order

II. Small Business and Individual Permitting Assistance Program;  
Discussion of permitting assistance coordinator's ombudsman role.

III. Adjourn

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 617,  
Austin, Texas 78701, (512) 463-5385.

Filed: October 21, 1997, 4:39 p.m.

TRD-9714012

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**Texas Cosmetology Commission**

Monday, November 10, 1997, 10:00 a.m.

Pro-Line Corporation, Conference Room, 2121 Panoramic Circle  
Dallas

**AGENDA:**

Call to Order; Approval of Minutes from September 8, 1997, Commission Meeting; Approval of Agency's Biennial Operating Plan; Presentation of Operating budget 1998-1999, and Possible Vote, Discussion and Review of §167 of Article IX, in the Appropriation Act — Dewey Helmcamp; Status Update Regarding Hepatitis Requirement; Brian King- "Where Do We Go From Here"; Public Hearing Regarding Rule 89.1, Administrative Fines; Discussion and Possible Amendment of Rule 89.1, and Possible Vote; Executive Session; Reconvene in Open Session and Possible Vote; Adjourn.

Contact: Catherine Nahay, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: October 21, 1997, 9:06 a.m.

TRD-9713973

◆ ◆ ◆  
**Texas Association of Counties Government Risk Management Pool**

Thursday, October 29, 1997, 9:00 a.m.

1204 San Antonio

Austin

Board of Trustees

**AGENDA:**

Call to Order 9:00 a.m.- Hon. Bonnie Wolbrueck

Approve June 12, 1997 and August 29, 1997 Minutes

Ratify Minutes Exec. Committee Meeting September 30, 1997

Approve Budget for 1998 — Mr. Terry Wyatt

Investment Report — Mr. Ron Schultz or Mr. Paul Williams

Finance Report — Mr. Terry Wyatt

Legal Department Litigation Update (Closed Session) — Mr. Jon Needle

Field Services Report — Mr. Donnie Carriker

Program Administrative Report — Mr. Jim Jean

Program Status; Receive Report on National Reinsurance Pool; Review/Approve Endorsement to Automobile Coverage Document-Increased Limits for Out of State Travel; Review/Consider POL Endorsement to cover payment of back wages in certain instances; Amend Underwriters Discretion for all Line of Coverage; Appoint Committee to Review/Amend Underwriting Standards; Report on Surcharge/credits

Select Firm to Perform AL/GL Actuarial Analysis for 1997; Select Firm to Perform PO/LE Actuarial Analysis for 1997

Claims Managers Report — Mr. Larry Cowles

Adjourn

Contact: James Jean, P.O. Box 2131, Austin, Texas 78768, (512) 478-8753.

Filed: October 15, 1997, 1:27 p.m.

TRD-9713683

◆ ◆ ◆  
**Texas Association of Counties Unemployment Compensation Fund**

Friday, October 30, 1997, 9:00 a.m.

1204 San Antonio

Austin

Board of Trustees

**AGENDA:**

Call to Order 9:00 a.m.- Hon. Lanelle Dovel

Approval Board minutes October 23, 1996

Finance Report — Mr. Terry Wyatt

Presentation of Annual Financial Audit — Ernest and Young

Approve budget for 1998

Investment Report — Ron Schultz or Paul Williams

Field Services Report — Donnie Carriker

Program Administration Report — Mr. Jim Jean

Program Status; Review Claims Activity; Review Membership Accounting; Review/Determine Member Rates; Review/Determine Member Reserve Accounty Level; Review Federally mandated New Hire Reporting Requirements

Adjourn

Contact: James Jean, P.O. Box 2131, Austin, Texas 78768, (512) 478-8753.

Filed: October 15, 1997, 1:27 p.m.

TRD-9713684

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**Daughters of the Republic of Texas, Inc.**

Thursday-Friday, November 6-7, 1997, 8:00 a.m.



November 6— Four Points Hotel-Pedernales Room, 7800 North IH35;  
November 7, The French Legation, Carriage House, 802 San Marcos  
Street

Austin

Board of Management

AGENDA:

The Daughters of the Republic of Texas, Inc., exercising an over-  
abundance of caution, hereby notice a portion of the Board of Man-  
agement meeting as an open meeting under the Texas Open Meetings  
Act, with regard to all matters pertaining to State owned properties  
which are under the control of D.R.T., Inc.

Thursday, November 6, 1997 — Convene at 8:00 a.m. Closed Session  
all day.

Friday, November 7, 1997 — 8:30 a.m. Open session, Determination  
of Quorum, Reports or discussion preview to reports of Committees  
operating State owned Properties which are under the control of  
D.R.T., Inc.- Alamo Committee, DRT Library Committee, French  
Legation. Closed/Executive Session — Determination of Quorum.  
Recess at 11:00 a.m.

Contact: Tookie Dempsey Walthall, 112 Moss Drive, San Antonio,  
Texas 78213, (210) 344-4046.

Filed: October 15, 1997, 2:53 p.m.

TRD-9713689



## State Board of Dental Examiners

Thursday, November 6, 1997, 1:30 p.m.

333 Guadalupe, Tower 3, Suite 800

Austin

Credentials Review Committee

AGENDA:

I. Call to order

II. Roll Call

III. Minutes

IV. Review dental applications for licensure by credentials.

V. Review dental hygiene applications for licensure by credentials

VI. Public Comments

VII. Announcements

VIII. Adjourn.

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower Three, Suite  
800, Austin, Texas 78701, (512) 463-6400.

Filed: October 22, 1997, 8:07 a.m.

TRD-9714016



Thursday, November 6, 1997, 2:30 p.m.

333 Guadalupe, Tower 3, Suite 800

Austin

Enforcement Committee

AGENDA:

I. Call to order

II. Roll Call

III. Minutes

IV. Rules- discuss proposed rules 109.103, 109.144, 109.204,  
109.156, 109.157, 109.158 and 107.400.

V. Discuss whether dental hygienists may administer dentipatch

VI. Discussion on PDWOL-making mouthguards from impressions  
made by customers

VII. Discuss proposing a rule that requires sterilization equipment to  
be monitored weekly with biological monitors

VIII. Discuss mercury-free dentistry

IX. Discuss policy and rules regarding advertising

X. Report on mortality data

XI. Announcements

XII. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower Three, Suite  
800, Austin, Texas 78701, (512) 463-6400.

Filed: October 22, 1997, 8:07 a.m.

TRD-9714017



Thursday, November 6, 1997, 2:30 p.m.

333 Guadalupe, Tower 2, Second Floor, Room II-225

Austin

Continuing Education Committee

AGENDA:

I. Call to order

II. Roll Call

III. Minutes

IV. Discuss proposing new rule defining CE exemption criteria.

V. Discuss defining the term “technical and scientific” as related to  
clinical care

VI. Discuss process for implementing audit procedures

VII. Discuss allowing interactive courses as part of CE requirements.

VIII. Public Comment

IX. Announcements

X. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower Three, Suite  
800, Austin, Texas 78701, (512) 463-6400.

Filed: October 22, 1997, 8:08 a.m.

TRD-9714018



Friday, November 7, 1997, 8:00 a.m.

333 Guadalupe, Tower 2, Second Floor, Room II-225

Austin

Board

AGENDA:

I. Call to order  
II. Roll Call  
III. Minutes  
IV. Rules — discuss and consider final adoption of rules 101.1, 101.5, 101.7, 102.2, 103.1, 103.2, 103.3, 103.11, 107.300, 109.201, 109.300, 114.1, 116.3, 117.1. Discuss and consider for public comment publication of rules 109.103, 109.144, 109.204.  
V. Appearances before the Board — Davidson, Greene, Kye, Methodist Health Care Ministries, Robinson  
VI. Licensing and Examinations reports  
VII. Enforcement reports  
VIII. Administration reports  
IX. President's report  
X. Executive Director's report  
XI. General Counsel's report  
XII. Public Comments  
XIII. Announcements  
XIV. Adjourn  
Contact: Mei Ling Clendennen, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.  
Filed: October 22, 1997, 7:59 a.m.  
TRD-9714015

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**Texas State Board of Examiners of Dietitians**

Saturday, November 8, 1997, 8:30 a.m.  
Hill Country Memorial Hospital, 1020 Kerrville Highway  
Fredericksburg  
Rules Committee  
AGENDA:

The committee will recognize guests and discuss and possibly act on: a recommendation for final adoption of proposed amendments to 22 Texas Administrative Code (TAC) §§711.7 (Application Procedures); 711.9 (Provisional Licensed Dietitians); and 711.17 (Continuing Education Requirements) as published in the Texas Register (22 TexReg 9803, October 3, 1997); proposed amendments to 22 TAC, Chapter 711; and the setting of the next meeting date.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601.  
Filed: October 17, 1997, 12:56 p.m.

TRD-9713813

◆ ◆ ◆  
Saturday, November 8, 1997, 9:00 a.m.  
Hill Country Memorial Hospital, 1020 Kerrville Highway  
Fredericksburg  
Program Approval Committee

AGENDA:

The committee will introduce guests and discuss and possibly act on: Individual Preplanned Professional Experience Program for Donna Rose; and setting of the next meeting date.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601.  
Filed: October 17, 1997, 12:56 p.m.

TRD-9713812

◆ ◆ ◆  
Saturday, November 8, 1997, 11:00 a.m.  
Hill Country Memorial Hospital, 1020 Kerrville Highway  
Fredericksburg  
Complaint Committee

AGENDA:

The committee will recognize guests and discuss and possibly act on: (DT 97-001; DT 97-002; DT 97-003; DT 97-004; DT 98-001; DT 98-002; and DT 98-003); and the setting of the next meeting date.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601.  
Filed: October 17, 1997, 12:56 p.m.

TRD-9713811

◆ ◆ ◆  
Saturday, November 8, 1997, 12:00 p.m.  
Hill Country Memorial Hospital, 1020 Kerrville Highway  
Fredericksburg  
Finance Committee

AGENDA:

The committee will discuss and possibly act on the budget for fiscal year 1997-1998.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601.  
Filed: October 17, 1997, 12:56 p.m.

TRD-9713810

◆ ◆ ◆  
Saturday, November 8, 1997, 2:00 p.m.  
Hill Country Memorial Hospital, 1020 Kerrville Highway  
Fredericksburg  
Regular Board Meeting

AGENDA:

The committee will introduce guests discuss and possibly act: approval of agenda; approval of the minutes of the meeting of the Texas State board of Examiners of Dietitians (TSBED) held June 27, 1997; chairman's report; executive secretary's report (ratification of applications approved by the executive secretary); standing committee reports (Rules Committee (final adoption of proposed amendments to 22 Texas Administrative Code (TAC) §§711.7 (Application Procedures); 711.9 (Provisional Licensed Dietitians); and 711.17 (Continuing Education Requirements) as published in the Texas Register 22 TexReg 9803, October 3, 1997; and proposed amendments to 22 TAC, Chapter 711); Program Approval Committee (Individual Pre-planned Professional Experience Program for Donna Rose); Finance Committee (budget for fiscal year 1997-1998); Complaint Committee (cases DT 97-001; DT 97-002; DT 97-003; DT 97-004; DT 98-001; DT 98-002; and DT 98-003)); board member attendance to the 1997 Clearinghouse on Licensure, Enforcement and Regulation (CLEAR) conference to be held in Norfolk, Virginia, September 3-6, 1997; appointments to committees (Rules; Finance; Program; Complaint; and Consumer); other business requiring no board action; and the setting of the next meeting date.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601.

Filed: October 17, 1997, 12:56 p.m.

TRD-9713809

## **Texas Education Agency (TEA)**

Thursday, November 6, 1997, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education, (SBOE) Committee of the Whole

### **AGENDA:**

Public testimony; Commissioner's comments; Report and recommendations of the commissioner of education concerning instructional materials offered for adoption in 1997; Adoption cycles for subjects in the foundation and enrichment curriculum and Proclamation 1997 of the SBOE; Sunset review of SBOE rules; Report on the Texas Student Assessment Program; Discussion of pending litigation. This discussion will be held in Room 1-103 in executive session in accordance with the Texas Government Code, §551.071 (1)(A), and will include a discussion of the following: (1) Angel G. et al. v. Meno, et al. relating to students with disabilities residing in care and treatment facilities; (2) Maxwell, et al v. Pasadena Independent School District (ISD) relating to Texas Assessment of Academic Skills (TAAS) testing; (3) State of Texas v. United States of America relating to the Voting Rights Act and its applicability to the placement of masters in independent school districts; (4) Soccoro ISD, et al. v. State Board of Education relating to the technology allotment; (5) GI FORUM, Image de Tejas v. Moses, et al. relating to the TAAS exit-level examination as a prerequisite for high school graduation; and (6) any other litigation arising after the date of posting for the meeting.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701.

Filed: October 22, 1997, 12:00 p.m.

TRD-9714052

Thursday, November 6, 1997, 2:00 p.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education, (SBOE) Committee on School Finance/ Permanent School Fund

### **AGENDA:**

Public testimony; Proposed repeal of 19 TAC Chapter 61, Subchapter B, School Facilities Standards; Proposed New 19 TAC §66.28, Identification of Subjects for Proclamation 1997; Braille materials for the visually impaired; Large type textbooks for the visually impaired; Approval of reimbursement of subsidies for the advanced placement examinations for students in financial need; School finance and appropriations update; Proposed amendment to 19 TAC §33.45, Proxy Voting Policy (relating to the Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund); Adoption of forecast for investment income of the Permanent School Fund (PSF) for the 1998-1999 biennium; Review of PSF securities transactions and the investment portfolio; Ratification of the purchases and sales of the investment portfolio of the PSF for the months of August and September 1997; Discussion of previous board approval of external fund managers and allocation of funds; Report of the PSF executive administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701.

Filed: October 22, 1997, 12:00 p.m.

TRD-9714051

Thursday, November 6, 1997, 2:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education, (SBOE) Committee on Instruction

### **AGENDA:**

Public testimony; Discussion of proposed amendments to 19 TAC Chapter 74, Curriculum Requirements; Discussion of bilingual education program initiatives in the Houston Independent School District; Change in assessment rules to permit an extension of the deferral from the exit level test for limited English proficient students who have recently arrived in the United States; Report on Student Performance on the Algebra I End-of-Course test as Related to Instructional Materials; Update on Class Size Waivers, Bilingual Education Exceptions, and Waivers for English as a Second Language; Discussion of proposed repeal and readoption of 19 TAC Chapter 176, Driver Training Schools.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701.

Filed: October 22, 1997, 12:00 p.m.

TRD-9714053

Thursday, November 6, 1997, 2:00 p.m.

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education, (SBOE) Committee on Planning

**AGENDA:**

Public testimony; Proposed Repeal of 19 TAC Chapter 137, Professional Educator Preparation and Certification, Subchapter T, Reprimand, Suspension, Cancellation, and Reinstatement of Certificates and Proposed Repeal of 19 TAC Chapter 177, Standards, Ethics, and Practices; Proposed new 19 TAC Chapter 229, Accountability System for Educator Preparation; Review of proposed repeals of 19 TAC §230.1, General Provisions, §230.2, Purpose of Institutional Accountability System, §230.3, Criteria for Institutional Accountability, and §230.4, The Accreditation Process; Review of proposed amendment to 19 TAC §230.414, Certificates for Persons with Criminal Backgrounds; Review of proposed new 19 TAC §230.512, Emergency Certificates; Review of proposed new 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers; Review of proposed new 19 TAC Chapter 247, Educators' Code of Ethics; Review of proposed new 19 TAC Chapter 249, Disciplinary Proceedings and Sanctions; Update on approved open-enrollment charter schools and request for approval of charter amendments; Recommendation for an appointment to the Randolph Field Independent School District board of trustees; Academics 2000 Report; Discussion of ongoing communications activities; Discussion of federal governmental relations activities; Status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701.

Filed: October 22, 1997, 12:00 p.m.

TRD-9714054



Friday, November 7, 1997, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education, (SBOE)

**AGENDA:**

Invocation; Pledge of allegiance; Roll call; Approval of September 12, 1997 SBOE minutes; Public testimony; Heroes for Children Awards; Resolutions of the SBOE; Third Quarter (1997) Permanent School Fund investment managers' performance report; Report and recommendations of the commissioner of education concerning instructional materials offered for adoption in 1997; Adoption cycle for subjects in the foundation and enrichment curriculum and Proclamation 1997 of the SBOE; Proposed repeal of 19 TAC Chapter 137, Subchapter T, Reprimand, Suspension, Cancellation, and Reinstatement of Certificates and Proposed repeal of 19 TAC Chapter 177, Standards, Ethics, and Practices; Proposed new 19 TAC Chapter 229, Accountability System for Educator Preparation; Review of proposed repeals of 19 TAC §230.1, General Provisions, §230.2, Purpose of Institutional Accountability System, §230.3, Criteria for Institutional Accountability, and §230.4, The Accreditation Process; Review of proposed amendment to 19 TAC §230.414, Certificates for Persons with Criminal Backgrounds; Review of proposed new 19 TAC §230.512, Emergency Certificates; Review of proposed new 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers; Review of proposed new 19 TAC Chapter 247, Educator's Code of Ethics; Review of proposed new 19 TAC Chapter 249, Disciplinary Proceedings and Sanctions; Update on approved open-enrollment charter schools and

request for approval of charter amendments; Recommendation for an appointment to the Randolph Field Independent School District board of trustees; Proposed repeal of 19 TAC Chapter 61, Subchapter B, School Facilities Standards; Proposed New 19 TAC §66.28, Identification of Subjects for Proclamation 1997; Braille materials for the visually impaired; Large type textbooks for the visually impaired; Approval of reimbursement of subsidies for the advanced placement examinations for students in financial need; Proposed amendment to 19 TAC §33.45, Proxy Voting Policy (relating to the Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund); Adoption of forecast for investment income of the Permanent School Fund for the 1998-1999 Biennium; Ratification of the purchases and sales of the investment portfolio of the Permanent School Fund for the months of August and September 1997, Information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas (512) 463-9701.

Filed: October 22, 1997, 12:00 p.m.

TRD-9714055



## **State Employee Charitable Campaign**

Friday, October 24, 1997, 8:30 a.m.

3231 North McColl, Suite B

McAllen

Local Employee Committee, McAllen

**AGENDA:**

1. Call to order
2. Results to Date/Analysis
3. Completion of Paperwork
4. Questions and Answers
5. Next Meeting Date

Contact: Thelma Garza, P.O. Box 187, McAllen, Texas 78505, (956) 686-6331.

Filed: October 16, 1997, 10:53 a.m.

TRD-9713742



Thursday, November 6, 1997, 8:30 a.m.

210 East Ninth Street

Fort Worth

Local Employee Committee, Tarrant County

**AGENDA:**

1. Call to order
2. Status of Campaign
3. Recognition Event
4. Lessons Learned
5. Adjourn

Contact: Mary Todd, 210 Ninth Street, Fort Worth, Texas 76102, (817) 258-8143.

Filed: October 21, 1997, 10:54 a.m.

TRD-9713976

◆ ◆ ◆  
**General Land Office**

Wednesday, October 29, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831  
Austin

Veterans Land Board

**AGENDA:**

Approval of previous board meeting minutes; consideration and approval of awarding qualified high bids received at the Forfeited Land Sale of October 28, 1997; consideration of permanent Adoption of Rules concerning Texas Veterans Homes; discussion and consideration of state Veterans Homes Request for Proposal(s) for design-to-build and for operator contract(s); staff reports;

Contact: Linda K. Fisher, 1700 North Congress, Austin, Texas 78701, Room 836, (512) 463-5016.

Filed: October 20, 1997, 4:06 p.m.

TRD-9713962

◆ ◆ ◆  
**Texas Health Care Information Council**

Tuesday, October 28, 1997, 8:00 a.m.

Joe C. Thompson Conference Center, 26th and Red River Streets  
Austin

Non-Hospital Discharge Data and Extended Information Plan Committee

**AGENDA:**

The Texas Health Care Information Council's Non-Hospital Discharge Data and Expanded Information Plan Committee will convene in open session, deliberate, and possibly take formal action on the following items: September 30, 1997 minutes, TAC report and recommendations; acquisition of consultant's services relating to 25 TAC §1301.31-1301.35; report on HMO HEDIS training seminar plans and public comments.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Teas 78751, (512) 424-6490, fax: (512) 424-6491.

Filed: October 17, 1997, 10:03 a.m.

TRD-9713796

◆ ◆ ◆  
Tuesday, October 28, 1997, 8:00 a.m.

Joe C. Thompson Conference Center, 26th and Red River Streets  
Austin

Hospital Discharge Data Committee

**AGENDA:**

The Texas Health Care Information Council's Hospital Discharge Data Committee will convene in open session, deliberate, and possibly take formal action on the following items: September 5, 1997 minutes; comments relating to rules proposed on September 5, 1997 (22 TexReg 9427, September 19, 1997); information system design and data warehouse project and recommendation to Council concerning design authority; TAC reports and mission, future assignments, and TAC recommendations; offer from Texas Hospital

Association concerning use of 1997 Patient Data System UB-92 database by Council; and public comments.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Teas 78751, (512) 424-6490, fax: (512) 424-6491.

Filed: October 17, 1997, 10:03 a.m.

TRD-9713795

◆ ◆ ◆  
Tuesday, October 28, 1997, 9:00 a.m.

Joe C. Thompson Conference Center, 26th and Red River Streets  
Austin

Full Council

**AGENDA:**

The Texas Health Care Information Council will convene in open session, deliberate, and possibly take formal action on the following items: interviews of applicants for position of executive director; selection of executive director; September 30, 1997 minutes; discussion and possible policy determination concerning extent of public participation during Council meeting; committee reports; technical advisory committee reports; selection of risk and severity adjustment methodology and authorization for Executive Director to negotiate and executive contract; authorization of executive director to finalize and issue request for offering relative to information system data collection and warehousing and recommendation to Council concerning design authority; staff reports; public comments; and selection of 1998 meeting dates.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Teas 78751, (512) 424-6490, fax: (512) 424-6491.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713794

◆ ◆ ◆  
**Texas Department of Health**

Wednesday, October 22, 1997, 3:00 p.m.

Exchange Building, Suite N-410, Texas Department of Health, 8407 Wall Street

Austin

Home and Community Support Services Advisory Committee

**AGENDA:**

The advisory committee will introduce guests and staff and discuss and possibly act on: Enforcement Action Committee report; revisions to proposed rules (25 Texas Administrative Code, Chapter 115) concerning home and community support services agencies to be presented to the Board of Health on November 21, 1997. The committee may take action to make a recommendation to the Board of Health on the rules; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Merrie Dufлот, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647.

Filed: October 15, 1997, 4:06 p.m.

TRD-9713730  
◆ ◆ ◆

Thursday, October 23, 1997, 8:15 a.m.

El Paso-County Health and Environmental District, Board Room 139,  
1148 Airway Boulevard

El Paso

Texas Board of Health Regulatory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the September 11, 1997 meeting; proposed rules concerning Fish and Fishery Products Hazard Analysis Critical Control Point Regulations; final adoption of rules concerning Milk and Milk Product Fees; and discussions concerning (proposed amendments to the Texas environmental lead reduction rules concerning the certification and accreditation for lead-based paint activities in target housing and child occupied facilities; voluntary indoor air quality guidelines for public schools; proposed product safety program amendments to bedding rules relating to manufacturers and renovators of mattresses and other sleep related products; proposed rules concerning persons performing radiologic procedures; proposed rules concerning the licensure of home and community support service agencies; and proposed repeal of the rules concerning the regulation of health maintenance organizations).

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713694

◆ ◆ ◆

Thursday, October 23, 1997, 9:00 a.m.

El Paso City-County Health and Environmental District, Board Room  
139, 1138 Airway Boulevard

El Paso

Texas Board of Health Financing Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 11, 1997, meeting; proposed rules concerning Kidney Health Care; approval of Kidney Health Care benefits for fiscal year 1998; Medicaid Managed Care report; and a Health Care Financing contract status report.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713695

◆ ◆ ◆

Thursday, October 23, 1997, 10:00 a.m.

El Paso City-County Health and Environmental District, Board Room  
139, 1148 Airway Boulevard

El Paso

Texas Board of Health Strategic Management Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the September 11, 1997 meeting; approval of general revenue transfers for fiscal year 1997; adoption of the "Texas Department of Health Regulatory Philosophy": developed by the Enhanced Credibility Strategic Priorities Team; acceptance of a gift (approval of the gift of a radiological emergency response vehicle); follow-up to the Board of Health Strategic Planning Retreat; Sunset update (written report); Office of Boarder Health update; report on the Bureau of Human Immunodeficiency Virus and Sexually Transmitted Diseases (HIV/STD) prevention policy development activities; and strategic financial issues.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713696

◆ ◆ ◆

Thursday, October 23, 1997, 1:00 p.m.

El Paso City- County Health and Environmental District, Board Room  
139, 1148 Airway Boulevard

El Paso

Texas Board of Health Human Resources Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 11, 1997, meeting; appointments to (the Human Immunodeficiency Virus (HIV) Medication Advisory Committee; Wholesale Drug Distributors Advisory Committee; and the Hospital Data Advisory Committee); report on the Board of Health Advisory Committees; and the fiscal year 1998 operating budget for preventable disease and the schedule for future briefings.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713697

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Thursday, October 23, 1997, 2:00 p.m.

El Paso City- County Health and Environmental District, Board Room  
139, 1148 Airway Boulevard

El Paso

Texas Board of Health — Health and Clinical Services Committee

REVISED AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the September 12, 1997 meeting; approval of the Texas Position Statement on infant feeding; proposed rules for the HIV H.O.P.E. (Human Immunodeficiency Virus Health Options to Promote Employment) Project; and proposed rules for reporting traumatic brain injuries.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713698



Friday, October 24, 1997, 8:00 a.m.

Radisson Suite Inn El Paso Airport, Amigo Room, Second Floor, 1770 Airway Boulevard

El Paso

Texas Board of Health, Board Briefing

#### AGENDA:

The board will receive a briefing by the Commission on current activities of the Texas Department of Health; and hold a discussion concerning procedural and/or administrative issues of the Board of Health.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713699



Friday, October 24, 1997, 10:00 a.m.

El Paso City- County Health and Environmental District, Board Room 139, 1148 Airway Boulevard

El Paso

Texas Board of Health

#### AGENDA:

The board will meet in open session to introduce guests and discuss and possibly act on: approval of the minutes of the September 12, 1997, meeting; commissioner's report; resolution in support of National Epilepsy Month; report on activities of Public Health Regions 9 and 10; highlights of public health issues in El Paso; Strategic Management Committee report (approval of general revenue transfers for fiscal year 1997; adoption of the "Texas Department of Health Regulatory Philosophy" developed by the Enhanced Credibility Strategic Priorities Team; and acceptance of a gift (approval of the gift of a radiological emergency response vehicle)); Health Financing Committee Report (proposed rules concerning Kidney Health Care; and approval of Kidney Health Care benefits for fiscal year 1998; Health and Clinical Services Committee Report (approval of Texas Position Statement on infant feeding; proposed rules for the HIV H.O.P.E. (Human Immunodeficiency Virus Health Options to Promote Employment) Project; and proposed rules for reporting traumatic brain injuries); Human Resources Committee report (appointments to the HIV Medication Advisory Committee); Wholesale Drug Distributors Advisory Committee; and the Hospital Data Advisory Committee)); Regulatory Committee report (proposed rules concerning Fish and Fishery Products Hazard Analysis Critical Control Point Regulations; and final adoption of rules concerning Milk and Milk Product Fees); public comments; announcements and comments; and approval of

tentative meeting dates for 1998. The board will then enter into executive session to discuss pending litigation (Planned Parenthood of Houston and Southeast Texas, Inc., Patterson et al concerning (Rider 14 to the Texas Department of Health's general appropriations for fiscal year 1998-1999); and Coalition of Texas Long Term Care Pharmacies, Inc., American Pharmaceutical Services and Sunscript Pharmacies v. Texas Department of Health concerning Vendor Drug Rules adopted July, 1997.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: October 15, 1997, 3:38 p.m.

TRD-9713700



Friday, October 31, 1997, 9:30 a.m.

Moreton Building, Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

Oral Health Services Advisory Committee

#### AGENDA:

The committee will discuss and possibly act on: approving the minutes of the June 6, 1997 meeting; election of officers for fiscal year 1998; reorganization of the Oral Health Services Division; progress reports (access to care; Baby Bottle Tooth Decay/White Spot Awareness Campaign; and revision to the rules governing Medicaid dental services (25 Texas Administrative Code, Chapter 33)); legislative update (Children's Health Insurance Plan (CHIP) and Senate Bill 30); newspaper articles concerning Medicaid fraud and abuse; subcommittee reports (Orthodontic Subcommittee; and the Subcommittee on Behavior Management and Hospitalization); response to Dr. Seiler's questions; public comment; and identification of agenda items and the setting of the next committee meeting date.

To request ADA accommodation, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Karl Shaner, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 2097).

Filed: October 17, 1997, 11:32 a.m.

TRD-9713804



Tuesday, November 4, 1997, 9:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Opticians' Registry Advisory Committee

#### AGENDA:

The committee will hold a general orientation session, introduce guests and will discuss and possibly act on: election of chair and vice-chair; draw for staggered appointment terms; program director's report (overview of the rules of the Opticians's Registry (25 Texas Administrative Code, Chapter 129) and possible proposal of amendments; and defining the purpose and tasks of the committee);

appointment of subcommittees; public comment; other matters requiring no committee action; and the setting of the next meeting date for the committee.

Contact: Stephen Mills, 1100 West 49th Street, Austin, Texas 78756.  
(512) 834-6661.

Filed: October 17, 1997, 4:32 p.m.

TRD-9713861



## **Texas Higher Education Coordinating Board**

Monday, November 3, 1997, 8:30 a.m.

Central Texas College Campus, Academic Drive, Fine Arts Building,  
Room 112

Killeen

Special Committee to Study Proposed New State University in Killeen

### **AGENDA:**

Public hearing to hear comments from other institutions and the community about the need of the University of Central Texas to become a public university.

Contact: David Gardner, P.O. Box 12788, Capitol Station, Austin,  
Texas 78711, (512) 483-6150.

Filed: October 16, 1997, 3:25 p.m.

TRD-9713775



## **Texas Historical Commission**

Thursday, October 30, 1997, 1:30 p.m.

East Texas Oil Museum- Conference Room, Highway 259 at Ross  
Street

Kilgore

Economic Development Committee

### **AGENDA:**

1. Call to order.
2. Approval of minutes of July 24, 1997 meeting.
3. Selection of nominees for 1998 Official Main Street Cities.
4. Other Business.
5. Adjourn.

Contact: Terry Colley, P.O. Box 12276, Austin, Texas 78711, (512)  
463-6092.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713787



Thursday, October 30, 1997, 2:00 p.m.

East Texas Oil Museum- Rotunda Area, Highway 259 at Ross Street

Kilgore

Communications Committee

### **AGENDA:**

- I. Approval of Minutes
- II. Publications Audit

III. Update on revised literature review and logo policy

IV. Sponsorship of Fehrenback Book Award

V. Agency Marketing Plan

VI. Budget Recap

VII. Employee Communications— Manager's Teambuilding Work-  
shop

VIII. Shipwreck Exhibit PR

IX. General Medical Coverage Report

X. New Business

Contact: Renee Peterson, P.O. Box 12276, Austin, Texas 78711, (512)  
463-6100.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713788



Thursday, October 30, 1997, 2:00 p.m.

East Texas Oil Museum- Conference Room, Highway 259 at Ross  
Street

Kilgore

Architecture/Preservation Trust Fund Committee

### **AGENDA:**

- 1) Texas Preservation trust Fund Grant Program for Fiscal Year 1998
- 2) Texas County Courthouse Restoration Project
- 3) Update on significant architecture projects, including Union Station in Houston, Old Nueces County Courthouse in Corpus Christi, and the proposed Texas History Museum in Austin
- 4) Closing Announcements

Contact: Stan Graves/Lisa Harvell, P.O. Box 12276, Austin, Texas  
78711, (512) 463-6094.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713789



Thursday, October 30, 1997, 3:00 p.m.

East Texas Oil Museum- Rotunda Area, Highway 259 at Ross Street

Kilgore

Awards Committee

### **AGENDA:**

1. Call to order
2. Review of agency awards program
3. Renaming awards
4. Governor's Awards for Historic Preservation
5. Suggestions for new awards
6. Other business

Contact: Frances Rickard, P.O. Box 12276, Austin, Texas 78711, (512)  
463-5851.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713790



◆ ◆ ◆  
Thursday, October 30, 1997, 3:00 p.m.  
East Texas Oil Museum- Conference Room, Highway 259 at Ross Street  
Kilgore

Heritage Tourism Committee

AGENDA:

- I. Welcome
- II. Update on Heritage Tourism Strategic Plan
- III. Prioritizing of Heritage Tourism activities
- IV. Adjournment

Contact: Mario Sanchez, P.O. Box 12276, Austin, Texas 78711, (512) 463-5754.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713791

◆ ◆ ◆  
Friday, October 31, 1997, 8:00 a.m.  
East Texas Oil Museum- Rotunda Area, Highway 259 at Ross Street  
Kilgore

Executive Committee

AGENDA:

- I. Call to Order
- II. Appointments to the Friends of the THC
- III. Certification of Archeologists and Architects
- IV. Authorization Request for Full Time Equivalents (FTEs)
- V. New of Other Business
- VI. Executive Session of the Texas Open Meetings Act, Texas Government Code, to discuss personnel matters under Section 551.074, and consultations with attorney concerning pending or contemplated litigation under §551.071.

VII. Possible Action on Matters Discussed in Executive Session

VIII. Adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: October 17, 1997, 10:02 a.m.

TRD-9713792

◆ ◆ ◆  
Friday, October 31, 1997, 9:30 a.m.  
East Texas Oil Museum- Conference Room, Highway 259 at Ross Street

Kilgore

Quarterly Board Meeting

AGENDA:

- 1. Chairman's Report
- 2. Action Items
- 3. Information Items.

4. Executive Session of the Texas Open Meetings Act, Texas Government Code, to discuss personnel matters under §551.074, and consultations with attorney concerning pending or contemplated litigation under §551.071.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: October 17, 1997, 10:01 a.m.

TRD-9713786

◆ ◆ ◆  
Friday, October 31, 1997, 9:30 a.m.  
East Texas Oil Museum- Conference Room, Highway 259 at Ross Street

Kilgore

Quarterly Board Meeting

REVISED AGENDA:

- 1. Chairman's Report
- 1.5 Report on Site Visit to Texas A&M Conservation Research Lab

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: October 17, 1997, 4:14 p.m.

TRD-9713857

◆ ◆ ◆  
**Texas Department of Human Services (TDHS)**

Wednesday, October 29, 1997, 8:00 a.m.

701 West 51st Street, Room 360, West Tower (Winters Complex)

Austin

Nursing Facility Administrators Advisory Committee

AGENDA:

- 1. Review of Enabling Statute and Responsibilities of the Committee.
- 2. Review of Proposed Policies of Senate Bill 84.
- 3. Review of Complaints Against Nursing Facility Administrators.

Contact: Jerry Walker, P.O. Box 149030, Austin, Texas 78714-9030. (512) 834-6681.

Filed: October 17, 1997, 4:31 p.m.

TRD-9713860

◆ ◆ ◆  
Monday, November 3, 1997, 9:00 a.m.  
701 West 51st Street, Room 560, West Tower (Winters Complex)  
Austin

Alzheimer's Advisory Committee

AGENDA:

Orientation and organizational planning session.

Contact: Trena Barnett, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3272.

Filed: October 22, 1997, 10:07 a.m.

TRD-9714027

## **Texas Health Insurance Risk Pool ("Health Pool")**

Friday, October 24, 1997 – Board (2:00 p.m.); Actuarial/Rating (8:00 a.m.); Benefits (8:00 a.m.); Staffing (12:30 p.m.)

333 Guadalupe, Board, Actuarial/Ratings, Benefits (Lobby, Room 102); Staff, (Hobby 1, Room 1350G)

Austin

Board of Directors and the Actuarial/Rating, Benefits and Staffing Subcommittees

I. EXECUTIVE SESSION: Subcommittees or the Board may meet in Executive Sessions in accordance with the Texas Open Meetings Act to discuss personnel matters or to consult with counsel. II. Subcommittees: 1. Actuarial/Rating Subcommittee: Deliberation regarding retention of outside actuarial consultant, including review of responses from invitation for bid; discussion of actuarial and rating issues related to potential benefit plans for Health Pool; issues relating to designation of illnesses or conditions qualifying a person for automatic acceptance to the Health Pool; review of draft assessment rule and other matters related to assessments; possibility of a Rate Data Call to use in calculating assessments; possible Texas Department of Insurance ("TDI") rule requiring notice by insurers of Health Pool availability; possible recommendations to full Board regarding the above matters; future meetings; other administrative matters. May meet jointly with Benefits subcommittee.

2. Benefits Subcommittee: Deliberations regarding potential benefit plans to be selected by the Board; role of actuarial consultant to be chosen by Board in regards to benefit plans; designation of illnesses or conditions qualifying a person for automatic acceptance to the Health Pool; possible retention of outside actuarial consultant, including possible review of responses from invitation for bid; review of draft assessment rule and other matters related to assessments; possibility of a Rate Data Call to use in calculating assessments; possible TDI rule requiring notice by insurers of Health Pool availability; possible recommendations to full Board regarding the above-referenced matters; future meetings; other administrative matters. May meet jointly with Actuarial/Rating subcommittee.

3. Staffing Subcommittee: Deliberation regarding possible hiring executive director for the Health Pool, including review of responses from postings; dissemination of invitation for bid for executive director position; entering into management agreement with appropriate entity to run day-to-day operations of Health Pool, other related staffing matters; recommendations to full Board regarding the above matters; future meetings; other administrative matters.

II. Board: Reports from subcommittees; consideration of responses from posting for Executive Director, interviews with applicants and possible hire; possibility of entering into management agreement with an appropriate entity to run day-to-day business of the Health Pool, and approval of an invitation to bid for the management contract, if needed; responses from invitation for bids for an actuarial consultant; interviews, possible retention of an actuarial consultant; review, possible approval of request for proposal for Health Pool administrator; review of draft assessment rule and recommendation to the Commissioner of Insurance regarding same; other matters related to assessments; review possible Rate Data Call; discussion and possible approval of benefit plans; designation of illnesses or conditions qualifying a person for automatic acceptance to the Health Pool and related benefit matters; bank accounts, audits, financial reporting, administrative expenses and related financial matters; obtaining officer/director liability insurance coverage and

related matters, including possibility of disseminating invitation for bid; report from Board member Greg Barbutti and Texas Department of Insurance Staff regarding meeting of the national association of health insurance risk pools. Timelines/future meetings of Board; other administrative matters.

Contact: Rhonda Myron or Kim Stokes, 333 Guadalupe Street, Texas Department of Insurance, Austin, Texas 78711, (512) 463-6651.

Filed: October 16, 1997, 4:31p.m.

TRD-9713779

## **Texas Department of Insurance**

Monday, November 10, 1997, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket Number 454-97-1842.E. Request by SKILLED LABOR SERVICES, INC. , for an appeal hearing in respect to a decision of the Texas Workers' Compensation Insurance Facility (TWCIF) for Reimbursement of premiums on Longshore and Harbor Workers' Compensation.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 21, 1997, 3:03 p.m.

TRD-9713993

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Wednesday, November 12, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket Number 454-97-1715.D. In the matter of SUMMIT FINANCIAL GROUP, INC.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 21, 1997, 3:03 p.m.

TRD-9713994

◆ ◆ ◆

Monday, November 17, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket Number 454-97-0508.D. In the matter of AETNA DENTAL CARE OF TEXAS (reset from 8/18/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 21, 1997, 3:03 p.m.

TRD-9713995

◆ ◆ ◆

Monday, November 17, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket Number 454-97-1682.C. To consider whether disciplinary action should be taken against BRADLEY A. SCHERFF, Colleyville, Texas, who holds an Adjuster's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 21, 1997, 3:03 p.m.

TRD-9713996



Monday, November 17, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100  
Austin

AGENDA:

Docket Number 454-97-0934.C. To consider whether disciplinary action should be taken against GEORGE LARRY INGRUM, Pampa, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance (reset from October 13, 1997).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 21, 1997, 3:03 p.m.

TRD-9713997



Monday, November 17, 1997, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100  
Austin

AGENDA:

Docket Number 454-97-1817.C. To consider whether disciplinary action should be taken against MARK ELWYN BURROUGHS, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Local Recording Agent's License, and Managing General Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 21, 1997, 3:03 p.m.

TRD-9713998



## Texas Judicial Council

Thursday October 30, 1997, 10:00 a.m.

201 West 14th Street, Supreme Court Courtroom, Supreme Court Building

Austin

REVISED AGENDA:

Organizational meeting; discuss Council's duties; discuss recent court reform studies; receive report on Judicial Committee on Information Technology; discuss interim legislative study issues; discuss open judicial records administrative rule; set salaries of presiding judges of administrative judicial regions; discuss reporting ADR results on

pending cases; and discuss reporting original proceedings in courts of appeal.

Contact: Jim Hutcheson, 201 West 14th Street, Austin, Texas 78701, (512) 475-3748.

Filed: October 16, 1997, 4:46 p.m.

TRD-9713780



## Texas State Library and Archives Commission

Monday, November 3, 1997, 1:00 p.m.

Lorenzo de Zavala State Archives and Library Building, Room 314, 1201 Brazos Street

Austin

Audit Committee

REVISED AGENDA:

1. Internal Audit of grants made to North Texas Regional Library System.

2. Review 1997 Small Agency Management Control Audit.

3. Review Comptroller of Public Accounts, Fiscal Management, Claims Division Second and Third Quarters Report, FY 1997 Post-Payment Audits.

Contact: Michele Lamb, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460, email michele.lamb@tsl.state.tx.us

Filed: October 21, 1997, 4:19 p.m.

TRD-9714007



Monday, November 3, 1997, 1:20 p.m.

Lorenzo de Zavala State Archives and Library Building, Room 314, 1201 Brazos Street

Austin

REVISED AGENDA:

I. Approve Minutes of the August 4, 1997 Commission meeting.

II. Approve contracts greater than \$100,000.

III. Approve acceptance of gifts greater than \$500.

IV. Report of the Director and Librarian.

V. Adopt recommendations of Audit Committee on Internal Audit of grants made to North Texas Regional Library System.

VI. Audit Committee discussion of 1997 Small Agency Management Control Audit and Review Comptroller of Public Accounts, Claims Division Second and Third Quarters Report, FY 1997 Post Payment Audits.

VII. Approve sale of Louisiana flags to the Louisiana Historical Association.

VIII. Approve proposed changes to TSLAC Employee Guide.

IX. Adopt revised, second edition of State Records Retention Schedule, 13 TAC §6.10.

X. Approve Information Resources Biennial Operating Plan for FY 1998-1999.

XI. Adopt Commission meeting schedule for 1998.

XII. Approve publication of proposed rules concerning establishment and operation of friends group.

XIII. Public comment.

Contact: Michele Lamb, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460, email michele.lamb@tsl.state.tx.us

Filed: October 21, 1997, 4:19 p.m.

TRD-9714008



## **Texas Department of Licensing and Regulation**

Tuesday, October 28, 1997, 3:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Consumer Protection Section, Auctioneering

### **REVISED AGENDA:**

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against and revocation of license of the Respondent, Mitch Martin, and reimbursement to the Auctioneer Education and Recovery Fund for failing to pay all amounts due the seller within 15 banking days in violation of Tex. Rev. Civ. Stat. Ann. art 8700 (the Act) §7(a)(4) and 16 Tex. Admin. Code (TAC) §67.101(4). The Department will also consider the complainant's claim against the Auctioneer Education and Recovery Fund in accordance with the Act, §5C, pursuant to the Act and Tex. Rev. Civ. Stat. Ann. art. 9100; the Tex. Gov't. Code, Ch. 2001 (APA); and 16 TAC Ch. 67.

Contact: Allyson Lednick, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 17, 1997, 2:17 p.m.

TRD-9713820



Wednesday, October 29, 1997, 1:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Boilers

### **AGENDA:**

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties and inspection fees against the following Respondents: Las Haciendas Apartments; Lavon Cleaners; Le Mans Apartments; Lewisville I.S.D.; Lexington Inn Hotel; Liteup Corporation; Litton Industries and Lockhart Laundry and Cleaners for failure to pay boiler inspection/certification fee(s) to obtain certificates of operation for the above Respondents' boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) ch. 755 and 16 Tex. Admin. Code (TAC) ch. 65, pursuant to the Code and Tex. Rev. Civ. Stat. Ann. art 9100; Tex. Govt. Code ch. 2001 (APA); and 16 TAC ch. 65.

Contact: Allyson Lednick, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 17, 1997, 2:17 p.m.

TRD-9713821



Tuesday, November 4, 1997, 9:30 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division

### **AGENDA:**

To accept public comment on the proposal to adopt amendments to the following rules. Chapter 75- Air Conditioning and Refrigeration Contractors License Law.

Under the Americans with disabilities act, persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (512) 463-7348 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7348.

Filed: October 20, 1997, 3:04 p.m.

TRD-9713953



## **Texas Lottery Commission**

October 29, 1997, 9:00 a.m.

611 East Sixth Street, Grant Building, Commission Auditorium

Austin

### **AGENDA:**

According to the agenda summary, the Texas Lottery Commission will call the meeting to order; report, possible discussion, and/or action on an analysis of lottery sales for FY 1998 and FY 1999; consideration and possible action on lottery promotions; consideration and possible action, including proposal, on a new rule for a new on-line lottery game; status report on the Lottery Operations and Services Request for Proposals; consideration and possible action on issues relating to the lottery operator contract, including operational issues; consideration and possible action relating to the lottery operator contract, including operational issues; consideration and possible action regarding lottery procurements and use of subcontractors; status report, possible discussion, and possible action, including implementation, on legislation; status report, possible discussion, and possible action on the state audit report relating to the Texas Lottery Commission; consideration and possible action on a Motion for Rehearing in Docket Number 362-96-1926.B, St. Francis Academy PTG; Commission may meet in Executive Session; return to open session for further deliberation and possible action on any matter discussed in Executive Session; report by the Executive Director and possible discussion and/or action on the agency's financial status, budget and budget goals for FY 1998 and FY 1999, HUB performance and FTE status. report by the Charitable Bingo Operations Director and possible discussion and/or action on licensing and audit status of the division and possible issues relating to the Bingo Advisory Committee; consideration and possible action on the Texas Lottery's FY 1998-1999 advertising program; and adjournment.

For ADA assistance, call Michelle Guerrero, at (512) 344-5113 at least two days prior to meeting.

Contact: Michelle Guerrero, P.O. Box 16630, Austin, Texas 78761-6630, (512) 344-5113.

Filed: October 21, 1997, 4:32 p.m.

TRD-9714010



## Texas State Board of Examiners of Marriage and Family Therapists

Sunday, November 2, 1997, 1:00 p.m.

Conference Room 2-225, William Hobby Building, 333 Guadalupe Street

Austin

Rule Change Committee

AGENDA:

The committee will discuss and possibly act on: proposed amendments to 22 Texas Administrative Code, Chapter 801 concerning (the types of acceptable continuing education; inactive status; fees; and supervisor requirements for marriage and family therapists); and the assignment of future agenda items.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: October 17, 1997, 11:32 a.m.

TRD-9713805

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Sunday, November 2, 1997, 2:00 p.m.

Conference Room 2-225, William Hobby Building, 333 Guadalupe Street

Austin

Applications Review Committee

AGENDA:

The committee will discuss and possibly act on: inactive status requests (Joyce Baker, Linda Falter, Laurie Garza, Zachary Hodges, Kenneth Hopper, Jean Kuttner, Sophia Lonergan, Michael Murry, Helen Nerod, Connie Stein, Susan Uballe, and Katherine Vandenberg); request for an extension of the continuing education cycle for Loren Bryant; requests to return to active status for Diane Lyon and Cheryl Clark; request for reinstatement of license status for Thelma Duffey, Ph.D.; ratification of licensure applications, renewals, and temporary license extensions since August 30, 1997; and the assignment of future agenda items.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: October 17, 1997, 11:32 a.m.

TRD-9713806

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Sunday, November 2, 1997, 3:00 p.m.

Conference Room 2-225, William Hobby Building, 333 Guadalupe Street

Austin

Ethics Committee

AGENDA:

The committee will discuss and possibly act on: complaints (MFT-97-3: MFT-97-4: MFT-97-15: MFT-97-17: MFT-97-18: MFT-97-19: MFT-97-23: MFT-97-24: and MFT-97-32); and defining the procedures to follow in an investigation.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: October 17, 1997, 11:32 a.m.

TRD-9713807

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Monday, November 3, 1997, 9:00 a.m.

Conference Room 2-225, William Hobby Building, 333 Guadalupe Street

Austin

Regular Board Meeting

AGENDA:

The board chairperson will introduce guests and entertain public comment, and the board will discuss and possibly act on: committee reports (Application Review Committee (inactive status requests of Joyce Baker, Linda Falter, Laurie Garza, Zachary Hodges, Kenneth Hopper, Jean Kuttner, Sophia Lonergan, Michael Murry, Helen Nerod, Connie Stein, Susan Uballe, and Katherine Vandenberg); request for an extension of the continuing education cycle for Loren Bryant; requests to return to active status for Diane Lyon and Cheryl Clark; request for reinstatement of license status for Thelma Duffey, Ph.D.; and ratification of licensure applications, renewals, and temporary license extensions since August 30, 1997); Rule change committee (proposed amendments to 22 Texas Administrative Code, Chapter 801 concerning the types of acceptable continuing education; inactive status; fees, and supervisory requirements for marriage and family therapists); Ethics Committee (status of complaints (MFT-97-3: MFT-97-4: MFT-97-15: MFT-97-17: MFT-97-18: MFT-97-19: MFT-97-23: MFT-97-24: and MFT-97-32)); final order of acceptance of surrender for Davis Hedgpeth; presentation of the executive director's report; and other business requiring no board action.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: October 17, 1997, 11:32 a.m.

TRD-9713808

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## Texas Natural Resource Conservation Commission

Thursday, November 13, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on applications filed with the Texas Natural Resource Conservation Commission by:

ABLES SPRINGS WATER SUPPLY CORPORATION to amend its Certificate of Convenience and Necessity (CCN) Number 10819 which authorizes the provision of water utility service in Hunt, Kaufman and Van Zandt Counties, Texas. The applicant also proposes to decertify a portion of Tri-County Water Supply (CCN Number 10818) and to decertify a portion of Combined Consumers Water Supply Corporation (CCN Number 10855). The proposed utility service area includes four locations as follows: (1) An area located approximately 21 miles south of downtown Greenville, Texas in Hunt county and generally bounded on the west by State Highway 34, on the south by CR 3702, and on the north and east by CR 3701; (2) An area located approximately 21 miles south of downtown Greenville, Texas in Hunt County along FM 429 and generally bounded on the west (Mountainview Estates) and north by Lake Tawakoni, on the east by Duck Cove, and on the south by the county line; (3) An area located approximately 23 miles northwest of downtown Canton, Texas in Van Zandt County and generally bounded on the north and west by the county line, on the east by Duck Cove, and on the south by CR 3827; (4) An area located approximately 17 miles northeast of downtown Kaufman, Texas in Kaufman County along CR 346 and generally bounded on the west by FM 2728, on the east by the county line, on the north by CR 343, and on the south by Rocky Creek. The total area being requested for addition to Ables Springs Water Supply Corporation's current CCN area includes approximately 1,800 acres and 55 current customers. SOAH Docket Number 582-97-1689.

COMBINED CONSUMERS WATER SUPPLY CORPORATION has applied to the Commission to amend, by the addition and decertification of areas, its Certificate of Convenience and Necessity (CCN) Number 10855 which authorizes the provision of water utility service in Hunt and Van Zandt Counties, Texas. The proposed utility service area additions include: (1) An area approximately 4.5 miles west of downtown Quinlan, Texas and generally bounded on the northeast by CR 2412 and on the southeast by CR 2400 in Hunt county; (2) An area approximately 2 miles east of downtown Quinlan, Texas and generally bounded on the northeast by Lake Tawakoni in Hunt county; (3) An area approximately 1 mile south of downtown Quinlan, Texas and generally bounded on the west by CR 3605, on the north by FM 35 and on the south by CR 3613 in Hunt County; (4) An area approximately 5.5 miles southeast of downtown Quinlan, Texas and generally bounded on the north by Lake Tawakoni, and Duck Cove Road, and including areas along FM 429 and FM 751 in Hunt County; (5) An area approximately 10 miles southeast of Downtown Quinlan, Texas and is generally bounded on the north by CR 3810 and CR 3720, on the east by Lake Tawakoni; and on the south by CR 3708 in Van Zandt County. The proposed area for decertification is dually certificated with the City of West Tawakoni and is located approximately six miles southeast of downtown Quinlan, Texas and is generally bounded on the south and west by Lake Tawakoni and on the north by CR 3613 in Hunt County. Water utility service to the area will be provided by the City of West Tawakoni. SOAH Docket number 582-97-1690.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.  
Filed: October 20, 1997, 9:56 a.m.

TRD-9713883

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Monday, November 17, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on applications filed with the Texas Natural Resource Conservation Commission by the CITY OF BURLESON to amend its Certificate of Convenience and Necessity (CCN) Number 10906 to change from a "facilities plus 200 feet" certification to a bounded service area to provide water utility service in Johnson and Tarrant Counties, Texas. It is also proposing dual certification with portions of Johnson County Rural Water Supply Corporation and Bethesda Water Supply corporation. It is also proposing to serve in a portion of the Johnson County Fresh Water Supply District Number 1. The proposed utility service area is located in around the City of Burleson, Texas. The proposed service area is generally bounded on the north by County Road 1187 in Tarrant County, on the east by County Road 605, on the south by Farm to Market road 917 and on the west by 1021 in Johnson County. The total area being requested includes approximately 4,715 acres and 412 current customers. SOAH Docket Number 582-97-1878.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: October 20, 1997, 9:56 a.m.

TRD-9713884

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Tuesday, November 18, 1997, 7:00 p.m.

Nueces County Center Auditorium, 710 East Main Street

Robstown

Office of the Chief Clerk

AGENDA:

For an informal public meeting concerning an application by TEXAS ECOLOGISTS, INC. to the Texas Natural Resource Conservation Commission for Permit Number MSW-2267 to authorize a new Type I municipal solid waste facility (landfill). The site covers approximately 160 acres of land and is to receive approximately 833 tons of solid waste per day. The proposed municipal solid waste facility is located on the southwest corner of County Road 30 and County Road 69 in Nueces County, approximately 4.2 miles south of the intersection of State Highway 44 and County Road 69. Petronila, Texas is the nearest town located approximately 4.5 miles southeast of the facility.

Contact: Annie Tyrone, P.O. Box 13087, Austin, Texas 78711-3087, 1-800-687-4040.

Filed: October 21, 1997, 8:19 a.m.

TRD-9713971

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Tuesday, December 9, 1997, 10:00 a.m.

Bell County Courthouse-Commissioner's Courtroom, 103 East Central Avenue

Belton

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the

Texas Natural Resource Conservation Commission by ODELL GEER CONSTRUCTION COMPANY, INC. for issuance of proposed Air Permit Number 31490 to authorize construction of a rock crusher two miles west of Prairie Dell, off Solano Ranch Road in Bell County, Texas. SOAH Docket Number 582-97-1897.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: October 22, 1997, 10:25 p.m.

TRD-9714029



## Board of Nurse Examiners

Tuesday, October 28, 1997, 9:30 a.m.

Hobby Building, 333 Guadalupe, Tower I, Room 1264

Austin

Nursing Practice Advisory Committee

### AGENDA:

11:00 Conference Call with quorum of Committee to discuss and vote on the revision to the BNE Position Statement, #15.9, "RNs Performing Laser Therapy."

Contact: Mitchell Diaz, Box 430, Austin, Texas 78767-0430, (512) 305-6844.

Filed: October 20, 1997, 3:04 p.m.

TRD-9713954



Wednesday, October 29, 1997, 9:30 a.m.

Hobby Building, 333 Guadalupe, Tower I, Room 1264

Austin

Law and Regulations Advisory Committee

### AGENDA:

I. Call to Order

II. Introduction of Committee and Staff

III. Charge to Committee — Sally Glaze

IV. Background Material Related to Current Jurisprudence and Regulation:

Senate Bill 617

National nursing jurisdictions

Other professions

Jurisprudence definitions

V. Discussion/Future Committee Activities

VI. Meeting Schedule

VII. Adjournment

Contact: Mitchell Diaz, Box 430, Austin, Texas 78767-0430, (512) 305-6844.

Filed: October 20, 1997, 2:42 p.m.

TRD-9713947



## Texas Parks and Wildlife Department

Wednesday, November 5, 1997, 9:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission Ad Hoc Infrastructure Committee

### AGENDA:

Approval of the Committee Minutes from the previous meeting; BRIEFING- Chairman's Charges; BRIEFING-Communications Strategy for Infrastructure Repairs; Other Business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 10:56 a.m.

TRD-9714033



Wednesday, November 5, 1997, 9:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission Finance Committee

### AGENDA:

Approval of the Committee Minutes from the previous meeting; BRIEFING- Chairman's Charges; BRIEFING-Financial Review; ACTION-Bond Issuance; ACTION-FY-1998 Audit Plan; ACTION-Approval of Gifts; Other Business

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 10:57 a.m.

TRD-9714034



Wednesday, November 5, 1997, 9:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission Conservation Committee

### AGENDA:

Approval of the Committee Minutes from the previous meeting; BRIEFING- Chairman's Charges; BRIEFING-Master Planning Process; ACTION- Fiber Optic Conduit Easement-Lake Houston and Village Creek State Parks-Harris and Hardin Counties; ACTION-Tyler State Fish Hatchery; BRIEFING-Water; Other Business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 10:58 a.m.

TRD-9714035



Wednesday, November 5, 1997, 9:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission Regulations Committee

AGENDA:

Approval of the Committee Minutes from the previous meeting; BRIEFING- Chairman's Charges; BRIEFING-Statewide Hunting and Fishing Proclamations; ACTION: Proposed Scientific Breeder Regulations; BRIEFING-Proposed Non-game Regulations; ACTION-Proposed Falconry Regulations; ACTION-Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants Repeal and new Rules; ACTION-Restricted Wildlife Animal Proclamation; ACTION-Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants Proclamation; ACTION-Boater Education Program Rules; BRIEFING-Endangered Species Act; Other Business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 10:58 a.m.

TRD-9714036

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Wednesday, November 5, 1997, 6:30 p.m.

Bright Leaf, 4400 Crestway Drive

Austin

Parks and Wildlife Commission Dinner Meeting

AGENDA:

Members of the Texas Parks and Wildlife Commission plan to have dinner at 6:30 p.m., November 5, 1997. Although this function is primarily a social event and no formal action is planned, the Commission may discuss items on the Public Hearing scheduled for 9:00 a.m., Thursday, November 6, 1997. Agenda filed with the Secretary of State's office.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 10:59 a.m.

TRD-9714037

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Thursday, November 6, 1997, 9:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission Public Hearing

AGENDA:

Approval of the Minutes from the previous meeting; Presentation of Retirement Certificates and Service Awards; Presentation-American Fisheries Society Award for Sea Center; Presentation-Shikar-Safari Officer of the Year Award; Presentation- Texas Bighorn Society; Presentation-Cross Timbers Chapter of Quail Unlimited; Presentation- Ewing Halsell Foundation; Resolution- Tyler State Fish Hatchery; BRIEFING: Expo; ACTION: Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants Rules; ACTION-Restricted Wild Animal Proclamation; ACTION-Artwork Approval; ACTION- Bond Issuance; ACTION-Sand and Gravel Permit Rules; ACTION- Approval of Gifts; ACTION-Fiber Optic Conduit Easement-Lake Houston and Village Creek State Parks-Harris and Hardin Counties; BRIEFING-Snow Geese Populations and Harvest Information Program.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 11:00 a.m.

TRD-9714038

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Tuesday, November 18, 1997, 11:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Operation Game Thief

AGENDA:

Approval of the Previous Meeting Minutes; Financial Report; Consideration of Reward Payments; Next Meeting Date; Discussion Items and Other Business; Public Awareness Campaign, Policies Review.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 22, 1997, 11:01 a.m.

TRD-9714039

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**Texas State Board of Physician Assistant Exam**

Friday, October 31, 1997, 9:00 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Licensure Committee

AGENDA:

1. Call to Order

2. Roll Call

3. Review of licensure applicants referred to the Licensure Committee by the Executive Director for determination of eligibility for licensure.\*

4. Review of Physician Assistant application for permanent licensure.\*

\* Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, and Article 4495b-1, §4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Cindy McCrae, P.O. Box 2018, Austin, Texas 78757, (512) 305-7023.

Filed: October 22, 1997, 10:26 a.m.

TRD-9714032

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Friday, October 31, 1997, 10:00 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Long Range Planning Committee

AGENDA:

1. Call to Order

2. Roll Call



3. Report from the Center for Rural Health Initiative regarding the physician assistant loan reimbursement program.
4. Discussion, recommendation, and action on possible proposed legislative issues.
5. Discussion, recommendation and action on possible Long Range Planning issues, relating to physician assistant board funding and jurisprudence exam.
6. Operation Implementation Review.
7. Financial Report.

\*\* Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, and Article 4495b-1, §4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Cindy McCrae, P.O. Box 2018, Austin, Texas 78757, (512) 305-7023.

Filed: October 22, 1997, 10:26 a.m.

TRD-9714031



Friday, October 31, 1997, 11:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Board

AGENDA:

Call to Order

Roll Call

Approval of Committee Appointments: Abigail Rios Barrera, M.D. to Long Range Planning Committee, Michael Belgard, PA-C to the Disciplinary Committee, and Jerry K. Clements to the Licensure Committee.

Request for Termination of Suspension- Stan Burk, PA

Approval of minutes from previous Board meetings

Executive Director's Report

Report and recommendation from the Long Range Planning Committee

Report and recommendation from the Licensure Committee

Report and recommendation from the Disciplinary Committee

Contact: Cindy McCrae, P.O. Box 2018, Austin, Texas 78757, (512) 305-7023.

Filed: October 22, 1997, 10:26 a.m.

TRD-9714030



## **Texas State Board of Plumbing Examiners**

Monday, October 27, 1997, 9:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

Call to order and roll call.

Consideration of Minutes of September 15 and 16, 1997 Enforcement Committee Meeting for Adoption as Recorded.

Informal Conferences: Discussion and possible action on the following cases with the individuals who have agreed to appear: Case #98-00002 — Time — 10:00 a.m. and #98-00001 — 11:00 a.m.

Review of Citation List and possible action.

Review of Applicants with Past Criminal Convictions and possible action.

Consideration of and possible action on cities with more than 5,000 inhabitants that have no licensed plumbing inspectors.

Complaint Cases for Review: The following cases will be reviewed by and possibly acted upon by the Committee as time allows. Time may not allow for all cases listed to be reviewed: Case numbers 96-0198, 97-0634, 97-0745, 97-0451, 97-0455.

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: October 16, 1997, 8:00 a.m.

TRD-9713731



Monday, November 10, 1997, 8:30 a.m.

1201 Leopard Street

Corpus Christi

Board

AGENDA:

1. Roll call- 8:30 a.m.; 2. Recognize staff and visitors; 3. Public comment; 4. Consider approval of the minutes of the September 8, 1997 Board Meeting; 5. Hear Committee reports: a. Continuing Education; b. Rules Review; c. Code; d. Enforcement; e. Examination; f. Legislative; g. Medical Gas; h. Personnel; i. Water Supply Protection Specialist; 6. Attorney General Items; 7. Field Department; 8. Examination Department; 9. Hardship requests; 10. Committee assignments and appointments; 11. Fiscal Department; 12. Administrative Department; 13. Next meeting; 14. Adjournment.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: October 22, 1997, 11:14 a.m.

TRD-9714040



## **Texas State Board of Examiners of Professional Counselors**

Friday, November 14, 1997, 8:30 a.m.

Exchange Building, EMS Conference Room S-240, Texas Department of Health, 8407 Wall Street

Austin

Ad Hoc Testing Committee

AGENDA:

The committee will introduce guests and new committee members and will discuss and possibly act on: pilot item statistics; cumulative exam data; newly generated exam questions; and the setting of the next committee meeting date.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: John Luther, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658.

Filed: October 21, 1997, 1:37 p.m.

TRD-9713984



## **Texas Department of Protective and Regulatory Services**

Friday, October 31, 1997, 10:00 a.m.

Texas Department of Health, Moreton Building, Room M618, 1100 49th Street

Austin

Child Fatality Review State Committee Meeting

### **AGENDA:**

Welcome and Introductions. Reports: Coordinator Report; CFRT National Conference; Infant Mortality Review. Old Business: Data Collection Form; Investigation Protocol Manual. Lunch. New Business: CFRT Training/Network Meeting Goals for FY 1998: Assignments. Adjourn.

Contact: Janece Keetch, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4963.

Filed: October 16, 1997, 11:33 a.m.

TRD-9713743



## **Texas Public Finance Authority**

Monday, October 27, 1997, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee Room Five, Fifth Floor

Austin

Board

### **AGENDA:**

1. Call to order.
2. Approval of Minutes of September 24, 1997 Board Meeting.
3. Consider adoption of a Resolution authorizing the issuance of Texas Public Finance Authority General Obligation Bonds, Series 1997, approving the terms and conditions of such bonds, authorizing the execution and delivery of documents in connection therewith and actions necessary to effect the sale and delivery of such bonds, and resolving related matters.
4. Consider adoption of a Resolution authorizing the issuance of Texas Public Finance Authority Building Revenue and Revenue Refunding Bonds, Series 1997 A and Building Revenue Bonds, Series 1997B, approving the terms and conditions of such bonds, authorizing the execution and delivery of documents in connection therewith and actions necessary to effect the sale and delivery of such bonds, and resolving related matters.
5. Consider adoption of underwriting policies.

6. Consideration of dealer agreement on General Obligation Commercial Paper Program.

7. Other Business — FY 1998 Operating Budget

8. Adjourn.

Persons with disabilities who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Marce Watkins at (512) 463-5544. Requests should be made as far in advance as possible.

Austin

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: October 17, 1997, 10:03 a.m.

TRD-9713799



## **Railroad Commission of Texas**

Friday, October 31, 1997, 9:30 a.m.

Doubletree Hotel, 37 Northeast Loop 410, Las Brisas Room

San Antonio

### **AGENDA:**

The Commission will hear public comment regarding safety and service by rail providers in Texas.

9:30 a.m. — Call to order by Chairman Charles R. Matthews; opening remarks by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carol Keeton Rylander.

9:45 a.m. — Speakers comments to the Commission

3:45 — 4:00 p.m. — Closing remarks by Chairman Matthews, Commissioner Williamson, and Commissioner Rylander.

4:00 p.m. — Adjournment by Chairman Matthews (time will depend upon number of speakers).

The Commission may also take a break for lunch, but the time and length will be determined by the number of speakers.

Contact: Jerry Martin, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7001.

Filed: October 21, 1997, 3:25 p.m.

TRD-9713999



## **Texas Savings and Loan Department**

Monday, November 17, 1997, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, Third Floor

Austin

### **AGENDA:**

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from South Texas Bank, ssb, Victoria, Texas, to operate a branch office at 719 South Shoreline Drive, Suite 104, Nueces County, Corpus Christi, Texas, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Theresa Scarborough, 2601 North Lamar, Suite 201, Austin, Texas. 78705, (512) 475-1350.

Filed: October 20, 1997, 8:04 a.m.

TRD-9713864

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**State Securities Board**

Wednesday, November 5, 1997, 9:30 a.m.

Rusk State Office Building, 200 East 10th Street, Room 227

Austin

Board

**AGENDA:**

(1) July 23, 1997 Meeting Minutes. (2) Rules: (A) Published Rule Proposals relating to: (1) amending §§113.4, 113.11 and 113.12; (2) amending §114.4; (3) amending §§115.1 and 115.3; (4) repealing §§124.1–124.6 (5) amending §133.33; (6) creating new §139.18, concerning use of the Internet by dealers and investment advisers to advertise their services; and (7) creating new §139.19, concerning an exemption for sales to accredited investors; (B) New Rule Proposals relating to: (1) amending §109.3; and (2) amending §§114.1 and 114.3. (3) Status report on rulemaking for contested case procedures. (4) Discussion regarding possible creation of a de minimis exemption for investment advisers. (5) Progress report from staff on the redesign of the CRD system as it affects the agent transfer process. (6) Update on the Texas Venture Capital Conferences. (7) Commissioner's report on Board's Texas Investor Education Project. (8) Resolution honoring T. Deon Warner. (9) New business items for future Board meetings. (10) Update on Agency operations from Securities Commissioner and Senior Staff.

Contact: Denise Voigt Crawford, 200 East 10th Street, Fifth Floor, Austin, Texas 78701, (512) 305–8300.

Filed: October 20, 1997, 4:46 p.m.

TRD-9713965

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**State Seed and Plant Board**

Monday, November 10, 1997, 2:00 p.m.

200 Main Street, Worthington Hotel, Treaty Oak Board Room

Fort Worth

**AGENDA:**

Discussion and Action On: Minutes of the August 18, 1997 Meeting Applicants for License as Certified Seed Growers; Acknowledgment of Acquisition of Seed companies; Acknowledgment of Foreign Designations; Acknowledgment of Nomenclature Requests; Corrections to Variety Names; Appeal of Rejected Fields; Requests for Certification Eligibility; Certification Standards, including the addition of woody plant standards; and Public Comment.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542–3691.

Filed: October 17, 1997, 2:11 p.m.

TRD-9713819

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Monday, November 10, 1997, 3:00 p.m.

200 Main Street, Worthington Hotel, Treaty Oak Board Room

Fort Worth

Seed Arbitration Board

**AGENDA:**

The State Seed and Plant Board, acting as the Seed Arbitration Board, will discuss and possibly take action on the referral of the following sworn complaints filed in arbitration:

Joe M. Mahan and Darryl Mahan d/b/a Tex-Sandia vs. Petoseed, Inc., ESCO Distributing and Baxter Seed Company

Joe M. Mahan and Darryl Mahan d/b/a Tex-Sandia vs. Baxter Seed Company and Hollar Seed Company.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542–3691.

Filed: October 17, 1997, 2:11 p.m.

TRD-9713818

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**Texas Certified Self-Insurer Guaranty Association**

Monday, October 27, 1997, 11:00 a.m.

4000 South IH35

Austin

Board

**AGENDA:**

I. Call to Order

II. Discussion, Consideration and Possible Action on the Delegation of Duties and Responsibilities to the Executive Director of the Texas Certified Self-Insurer Guaranty Association.

III. Discussion, Consideration, and Possible Action on the Delegation of Duties and Responsibility for Execution of Contracts to the Executive Director of the Texas Certified Self-Insurer Guaranty Association Including Service and Goods, Professional, and/or Consultant Contracts.

IV. Discussion, Consideration, and Possible Action on the Possible Assessment to Members of the Texas Certified Self-Insurer Guaranty Association.

V. Executive Session: Pursuant to §551.074, Government Code, to consider personnel related matters involving public officers of employees, including matters relating to the Executive Director, and pursuant to §551.071, Government Code, to discuss matters relating to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation.

VI. Action on Matters Considered in Executive Session.

VII. General Reports, Discussion and Possible Action on Issues Relating to Guaranty Association Activities.

VIII. Adjournment.

Contact: Judy Roach, 1600 San Jacinto Center, 98 San Jacinto Boulevard, Austin, Texas 78701, (512) 322–2514.

Filed: October 17, 1997, 4:14 p.m.

TRD-9713854

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**Texas Senate**

Wednesday, November 12, 1997, 9:30 a.m.

Lt. Governor's Committee Room, 2E.20, State Capitol  
Austin

Senate Interim Committee on Sex Offenders

AGENDA:

I. Call to Order

II. Introductory Remarks by Senator Shapiro

III. Consideration and adoption of Committee Rules

IV. Invited Testimony

Mr. Wayne Scott— Texas Department Criminal Justice (TDCJ)

Mr. Gary Johnson — TDCJ, Institutional Division

Ms. Susan Cranford — TDCJ, Criminal Justice Assistance Program

Mr. Carl Jeffries (Interim Director) — TDCJ, Pardons and Parole

Mr. Tony Fabelo— Criminal Justice Policy Council

Mr. Steve Robinson— Texas Youth Commission

Dr. Linda Reyes — Texas Youth Commission

Ms. Vicki Wright — Texas Juvenile Probation Commission

V. Adjournment

Contact: Helen Gonzalez, P.O. Box 12068, Austin, Texas 78711, (512) 463-0108.

Filed: October 20, 1997, 9:19 a.m.

TRD-9713866

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## Teacher Retirement System of Texas

Friday, October 24, 1997, 8:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of Minutes of September 26, 1997, and October 14, 1997 Meetings

2. Consideration of Restructure of TCBY Tower Loan (Office Building in Little Rock, Arkansas)

3. Update on Portfolio, Including Mortgage Risk Ratings and Issues Affecting Corporate-Owned Properties.

For ADA, assistance, contact John R. Mercer, (512) 397-6400, or TDD (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: October 16, 1997, 4:10 p.m.

TRD-9713777

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Friday, October 24, 1997, 9:00 a.m.

1000 Red River, Fifth Floor Boardroom

Austin

Board of Trustees

AGENDA:

1. Roll Call of Board Members

2. Public Comments

3. Approval of Minutes of September 26, 1997, Meeting

4. Consideration of Board Member's Absence from September 26, 1997 Meeting

5. Consideration of Board Committee Appointments — Mr. Simms

6. Consideration of Resolution Designating the Trustees to Serve as Directors of Real Estate Title-Holding Corporations- Mr. Simms

7. Discussion of Real Estate Strategic Consultant Report- Susan Hudson Wilson

8. Report on Progress in Implementation of PAM- Mr. Jung

9. Status Report of Benefit Services Transformation (BeST Project) — Marian Miller

10. Report per §825.313(c) of the Government Code of Expenditures on Expenses that Exceed the Amount of Operation Expenses Appropriated and which are Required to Perform the Fiduciary Duties of the Board — Mr. Jung

11. Report of Executive Director - Mr. Dunlap

12. Comments by Board Members

For ADA, assistance, contact John R. Mercer, (512) 397-6400, or TDD (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: October 16, 1997, 4:10 p.m.

TRD-9713776

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**Texas State Technical College System**

Friday, October 24, 1997, 8:30 a.m.

TSTC Sweetwater, 300 College Drive

Sweetwater

Board of Regents

REVISED AGENDA:

Addition of one item for action by the Board of Regents: Sale of Excess Property from Texas State Technical College Waco.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867-4890.

Filed: October 16, 1997, 3:07 p.m.

TRD-9713761

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Friday, October 24, 1997, 8:35 a.m.

TSTC Sweetwater, 300 College Drive, Sears Board Room

Sweetwater

Board of Regents Closed Meeting

REVISED AGENDA:

Addition of one item to the closed meeting for the specific purpose provided in §551.071 of the Texas Government Code: Asbestos Litigation

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867-3964.

Filed: October 16, 1997, 3:25 p.m.

TRD-9713774

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**Texas Department of Transportation**

Thursday, November 6, 1997, 9:30 a.m.

125 East 11th Street, First Floor

Austin

Motor Vehicle Board

AGENDA:

Call to order; roll call. Approval of Minutes of Motor Vehicle Board Meeting on September 18, 1997. Election of Vice Chair. Employee Recognition. Argument on Proposals for Decision. Consideration of Proposals for Decision — Default Cases. Agreed Final Orders. Orders of Dismissal- Licensing and Enforcement. Public Hearings and consideration of rule proposals: Proposed TMVB Rule 101.6; Proposed TMVB Rule 101.16; Proposed TMVB Rule 101.52; Proposed TMVB Rule 103.1; Proposed TMVB Rule 103.4; repeal of TMVB Rule 103.2; Proposed TMVB Rule 107.8; Proposed TMVB Rule 107.10; Proposed TMVB Rule 111.4; Proposed TMVB Rule 111.8; Proposed TMVB Rule 111.9; Proposed TMVB Rule 111.11. Other: a. Litigation Status Report; b. Review of Consumer Complaint Recap Report including decisions made by examiners, division director and Board members; c. Enforcement Status Report; d. Division Operations Status Report. Adjournment.

Contact: Brett Bray, 150 East Riverside, Second Floor, Austin, Texas 78704, (512) 416-4800.

Filed: October 21, 1997, 1:28 p.m.

TRD-9713981

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**University of Houston System**

Thursday, October 23, 1997, 8:00 a.m.

Hilton Hotel and Conference Center, University of Houston, Shamrock Room, 4800 Calhoun

Houston

Board of Regents

AGENDA:

Executive Session; Installation of Officers; Open Forum; Sale of 3.3125 Acre Tract of Land at Fuqua Street Complex; Extension of Lease Agreement with The Victoria; Lease Agreement with Mr. George A. Totah; Amendment of CentraPlex Lease with Wharton County Junior College; Personnel Recommendations- October 1997 — Faculty and Professional/Administrative Staff; Award of Various Contracts; Architectural Schematic Design and Project Planning Guides; Appointment of Architect; Texas Higher Education Coordinating Board Campus Master Plan Update FY 1998-FY 2002; Extension of Contracts; Various Agreements; Outside Counsel Contracts; Consolidated Revenue/Refunding Bonds; Various Resolutions; Systemwide Marketing; Gift Acceptance Reports, etc. (See agenda filed at the office of the Secretary of State)

Contact: Peggy Cervenka, 1600 Smith Street, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: October 16, 1997, 10:52 a.m.

TRD-9713739

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**University of Texas at El Paso**

Tuesday, November 4, 1997, 2:00 p.m.

500 University, Administrative Building, Room 310

El Paso

Institutional Animal Care and Use Committee

AGENDA:

I. Call to order by Chairman James V. Devine.

II. Approval of the November 26, 1996 and April 17, 1997 meeting minutes

III. Review Protocol #A-893; Relationship Between Genetic Polymorphism and Adverse Effects of Human Exposure to Polycyclic Aromatic Hydrocarbons

IV. UDSA Report from September 24, 1997 on Protocols

V. Other business

Contact: Karen Hoover, Administration Building, Room 209, UT El Paso, Texas 79968, (815) 747-79390; fax: (915) 747-6474.

Filed: October 20, 1997, 3:04 p.m.

TRD-9713952

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**University Interscholastic League**

Sunday-Monday, October 19-20, 1997, 8:00 a.m.

Omni Southpark Hotel, 4140 Governors Row

Austin

Legislative Council

AGENDA:

Policy, athletic, music and academic related items will be presented by individuals to the 28 member Legislative Council and referred to standing committees on Sunday. Standing committees will meet on Sunday afternoon. Final action will be taken by the Legislative Council on Academic, Music, Athletic, and Policy items on Monday.

Contact: Bonnie Northcutt (23001 Lake Austin Boulevard, Austin, Texas 78752, (512) 471-5883.

Filed: October 15, 1997, 3:05 p.m.

TRD-9713690

## **University of Texas, M.D. Anderson Cancer Center**

Tuesday, October 21, 1997, 9:00 a.m.

1515 Holcome Boulevard, Room B8-4344.

Houston

Institutional Animal Care and Use Committee

AGENDA:

Review of Protocols for Animal Care and Use and Modifications thereof.

Contact: Anthony Mastromarino, Ph.D., 1515 Holcombe Boulevard, Box 101, Houston, Texas, 77030, (713) 792-3220.

Filed: October 16, 1997, 1:02 p.m.

TRD-9713747

## **Texas Council on Workforce and Economic Competitiveness**

Wednesday, November 5, 1997, 10:00 a.m.

1100 San Jacinto, Room 100

Austin

Executive Committee

AGENDA:

10:00 a.m. — Call to order, Public Comment; Discussion, Consideration and Possible Action Regarding Recommendations to the Governor on Strategic and Operational Plans Submitted by Local Workforce Development Boards; Adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 936-8103 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, TCWEC, P.O. Box 2241, Austin, Texas 78768, (512) 936-8103.

Filed: October 22, 1997, 9:13 p.m.

TRD-9714023

## **Texas Workforce Commission**

Monday, October 27, 1997, 10:00 a.m.

1117 Trinity Street

Austin

State Advisory Committee for Child Care Programs

AGENDA:

Orientation of Committee members on the Texas Workforce Commission Child Care program and policies. Discussion of local options for establishing vendor reimbursement rates and rates for parent co-pay amounts. Establish Committee by-laws.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: October 16, 1997, 2:30 p.m.

TRD-9713760

Wednesday, October 29, 1997, 1:00 p.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to House Bill 2777; (2) publication in the Texas Register of proposed incentive and sanction rule for local workforce boards; (3) potential and pending applications for certification of local workforce development boards; (4) recommendations to TCWEC of operational plans of local workforce development boards; (5) approval of local workforce board or private industry council nominees; (6) agency budget for Fiscal Year 1998. Discussion regarding: Revision of rules relating to the TANF employment program and rules related to Full Employment Pilot Project and on allowing local workforce development boards to determine what programs they will administer and whether or not to set deadlines on the board's plan submissions. Executive session pursuant to Government Code §551.074 to discuss the duties and responsibilities of the Executive Staff and other personnel; §551.071(1) concerning the pending litigation of the Texas AFL-CIO v. TWC; and §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss the Open Meetings Act and Administrative Procedures Act; Actions, if any, resulting from executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases on Dockets 43 and 44 and on motion for attorney's fees for Appeal Tribunal Number 97-058402-1-0997 and Commission Appeal Number 97-007075-10-062597; consideration and adoption on hearing notices in drug cases, of policies on the adoption of precedent cases and revision of precedent manual; Discussion regarding standards of proof in unemployment benefits cases involving drug testing; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: October 21, 1997, 3:58 p.m.

TRD-9714003

## Regional Meetings

Meetings filed October 15, 1997

Atascos County Appraisal District, Board of Directors, met at 4th and Avenue J, Poteet, October 23, 1997 at 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, (830) 742-3591. TRD-9713688.

Education Service Center, Region 20, Board of Directors, met at 1314 Hines Avenue, San Antonio, October 22, 1997 at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471. TRD-9713685.

North Texas Regional Library System, Board of Directors, met with revised agenda, at 1111 Foch Street, Suite 100, Fort Worth, October 23, 1997 at 1:30 p.m. Information may be obtained from Cynthia Brown, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9713693.

Trinity River Authority of Texas, Board of Directors, met at 5300 South Collins Street, Arlington, October 22, 1997 at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9713686.

Meetings filed October 16, 1997

Austin-Travis County MHMR Center, Community Forum, met at 1430 Collier Street, Board Room, Austin, October 21, 1997 at 5:45 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9713744.

Burke Center, Board of Trustees, met at 4101 South Medford Drive, Lufkin, October 28, 1997 at 1:00 p.m. Information may be obtained from Debra Fox, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9713737.

Cash Water Supply Corporation, Board of Directors, met at Corporation Office, FM 1564 at Highway 34, Greenville, October 20, 1997 at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9713732.

Central Plains Center for MHMR and SA, Board of Trustees, met at 208 South Columbia, Plainview, October 23, 1997 at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9713735.

Central Texas MHMR Center, Board of Trustees, met at 408 Mulberry Street, Brownwood, October 20, 1997 at 5:00 p.m. Information may be obtained from David Williams, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574. TRD-9713758.

Comal Appraisal District, Board of Directors, met at 178 East Mill Street, #102, New Braunfels, October 20, 1997 at 5:30 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222; (830) 625-8597. TRD-9713746.

Education Service Center, Region XI, Board of Directors, met at 3001 North Freeway, Fort Worth, October 27, 1997, 10:00 a.m. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9713757.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, October 22, 1997 at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North

St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9713750.

Erath County Appraisal District, Appraisal Review Board, met at 1390 Harbin Drive, Stephenville, October 30, 1997, 9:00 a.m. Information may be obtained from Nikki L. Keller, 1390 Harbin Drive, Stephenville, Texas 76401, (254) 965-5434. TRD-9713741.

Jim Wells County Soil and Water Conservation District Board 355, met at 2287 North Texas Boulevard, #5, Alice, October 21, 1997 at 2:00 p.m. Information may be obtained from Alberto Garcia Jr., 2287 North Texas Boulevard, #5, Alice, Texas 78332, (512) 668-8363. TRD-9713733.

Johnson County Rural Water Supply Corporation, Personnel Committee, met with revised agenda, at Corporation Office, 2849 Highway 171 South, Cleburne, October 17, 1997 at 6:15 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9713778.

Kleberg-Kenedy Soil and Water Conservation District 356, Board of Directors, met at 1017 South 14th Street, Kingsville, October 20, 1997 at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 920 East Caesar, Suite 4, Kingsville, Texas 78363, (512) 592-0309. TRD-9713734.

Liberty County Central Appraisal District, Appraisal Review Board, met at 315 Main Street, Liberty, October 23, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9713748.

Middle Rio Grande Development Council, Executive Committee, met at Holiday Inn, Sage Room, 920 East Main Street, Uvalde, October 21, 1997 at 6:30 p.m. Information may be obtained from Leodoro Martinez, Jr., Middle Rio Grande Development Council, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9713740.

Middle Rio Grande Development Council, Board of Directors, met at Holiday Inn, Sage Room, 920 East Main Street, Uvalde, October 22, 1997 at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., Middle Rio Grande Development Council, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9713738.

MHMR Authority of Brazos Valley, Board of Trustees, met at 623 Mary Lake Drive, Bryan, October 23, 1997, 1:15 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77802, (409) 822-6467. TRD-9713745.

Pecan Valley MHMR Region, Board of Trustees, met at 108 Pirate Drive, Granbury, October 22, 1997 at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (254) 965-8706. TRD-9713749.

Upshur County Appraisal District, Board of Directors, met at 1711 Latch Road, Gilmer, October 21, 1997 at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280. TRD-9713762.

West Central Texas Council of Governments, Executive Committee, met at Abilene Civic Center, 1100 North Sixth Street, Abilene, October 22, 1997 at 1:30 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9713759.

Meetings filed October 17, 1997

Alamo Area Council of Governments, Management Committee, met at 118 Broadway, Suite 400, San Antonio, October 22, 1997 at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118

Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9713785.

Eastland County Appraisal District, Appraisal Review Board, met at 100 Main Street, Eastland, October 29, 1997 at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (254) 629-8597. TRD-9713801.

East Texas Council of Governments, Workforce Development Board, Governance Task Force, met at 3800 Stone Road, Kilgore, October 23, 1997 at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9713845.

Education Service Center, Region XV, Board of Directors, met at 612 South Irene Street, San Angelo, October 23, 1997 at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9713784.

Edwards Aquifer Authority, Transfer Rules Workshop, 1615 North St. Mary's Street, San Antonio, October 21, 1997 at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9713783.

Golden Crescent Private Industry Council, met at 2401 Houston Highway, Victoria, October 22, 1997 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9713793.

Gonzales County Appraisal District, Appraisal Review Board, met at 928 St. Paul Street, Gonzales, October 23, 1997 at 9:00 a.m. Information may be obtained from Brenda Downey, or Glenda Strackbein, 928 St Paul, Gonzales, Texas 78629, (210) 672-2879. TRD-9713803.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, October 29, 1997 at 5:15 p.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9713858.

Johnson County Rural Water Supply Corporation, Water Source Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, October 21, 1997 at 5:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9713798.

Johnson County Rural Water Supply Corporation, Regular Monthly Board meeting, met at Corporation Office, 2849 Highway 171 South, Cleburne, October 21, 1997 at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9713797.

Lower Colorado River Authority, Technology and Information Services Ad Hoc Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, October 21, 1997 at 3:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713853.

Lower Colorado River Authority, Regional Development Committee, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin Boulevard (on Thursday, October 23, 1997), LCRA Hancock Building, Board Room, at 9:00 a.m. in Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713852.

Lower Colorado River Authority, Audit Committee, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin

Boulevard (on Thursday, October 23, 1997, ) at 9:00 a.m., LCRA Hancock Building, Board Room, Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713851.

Lower Colorado River Authority, Finance and Administration Committee, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin Boulevard (on Thursday, October 23, 1997, ) at 9:00 a.m., LCRA Hancock Building, Board Room, Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713850.

Lower Colorado River Authority, Land and Water Operations Committee, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin Boulevard (on Thursday, October 23, 1997, ) at 9:00 a.m., LCRA Hancock Building, Board Room, Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713849.

Lower Colorado River Authority, Energy Operations Committee, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin Boulevard (on Thursday, October 23, 1997, ) at 9:00 a.m., LCRA Hancock Building, Board Room, Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713848.

Lower Colorado River Authority, Planning and Public Policy Committee, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin Boulevard (on Thursday, October 23, 1997, ) at 9:00 a.m., LCRA Hancock Building, Board Room, Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713847.

Lower Colorado River Authority, Board of Directors, met at 1405 Willow Street (on October 22, 1997) Riverside Conference Center, Texas Building, Bastrop, at 9:00 a.m., and at 3701 Lake Austin Boulevard (on Thursday, October 23, 1997, ) at 9:00 a.m., LCRA Hancock Building, Board Room, Austin. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9713846.

Lower Neches Valley Authority, Board of Directors, met at 7850 Eastex Freeway, Beaumont, October 21, 1997 at 10:30 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9713836.

Lower Rio Grande Valley Tech Prep Associate Degree Consortium, (a/k/a Tech Prep of the Rio Grande Valley, Inc., Lower Rio Grande Valley School-to-Work Consortium, Annual Members Meeting, met at The Ballroom, Victoria Palms Resort, 602 North Victoria Road, Donna, October 23, 1997 at 9:30 a.m. Information may be obtained from Mrs. Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550-3697, (956) 425-0729. TRD-9713781.

Middle Rio Grande Development Council, Board of Directors, met with revised agenda, at Holiday Inn, Sage Room, 920 East Main Street, Uvalde, October 22, 1997 at 1:00 p.m. Information may be obtained from Leodoro Martinez Jr., P.O. Box 1199, Carrizso Springs, Texas 78834, (210) 876-3533. TRD-9713844.

Panhandle Ground Water Conservation District Three, Board of Directors Public Meeting, was held at District Office, 201 West Third Street, White Deer, October 22, 1997 at 7:30 p.m. Information may



be obtained from C.E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9713855.

Meetings filed October 20, 1997

Dallas Housing Authority, Board of Commissioners, met at Dallas Housing Authority, 3939 North Hampton, Dallas, October 23, 1997 at 3:00 p.m. Information may be obtained from Betsy Horn, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8302. TRD-9713950.

Education Service Center, Region IX, Board of Directors, met at 301 Loop 11, Wichita Falls, October 30, 1997 at 12:30 p.m. Information may be obtained from Ron Preston, 301 Loop 11, Wichita Falls, Texas 76305, (940) 322-6928. TRD-9713867.

Hickory Underground Water Conservation District One, Board and Advisors, met at 2005 South Bridge, Brady, October 23, 1997 at 5:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9713865.

Lee County Appraisal District, Board of Directors, met at 218 East Richmond Street, Giddings, October 29, 1997 at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9713885.

Middle Rio Grande Development Council, Executive Committee, met with emergency revised agenda, at Holiday Inn, Sage Room, 920 East Main, Uvalde, October 21, 1997, at 6:30 p.m. Information may be obtained from Leodoro Martinez, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9713963.

Middle Rio Grande Development Council, Board of Directors, met with emergency revised agenda, at Holiday Inn, 920 East Main, Sage Room, Uvalde, October 22, 1997, at 1:00 p.m. Information may be obtained from Leodoro Martinez, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9713964.

North Central Texas Workforce Development Board, Inc., Finance Committee, met at 616 Six Flags Drive, Arlington, October 24, 1997 at 9:30 a.m. Information may be obtained from Casandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9713959.

North Central Texas Workforce Development Board, Inc., Board, met at 616 Six Flags Drive, Arlington, October 28, 1997 at 9:30 a.m. Information may be obtained from Casandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9713958.

North Texas Tollway Authority, Benefits and Compensation Committee, met at 3015 Raleigh Street, Dallas, October 24, 1997 at 2:00 p.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200. TRD-9713939.

Sharon Water Supply Corporation, Board of Directors, met at the Office of Sharon Water Supply Corporation, off Highway 37, Winnsboro, October 30, 1997 at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD-9713949.

Southwest Milam Water Supply Corporation, Board, met at 114 East Cameron, Rockdale, October 27, 1997, 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9713957.

Tarrant Appraisal District Appraisal Review Board, will meet at 2329 Gravel Road, Fort Worth, November 13, 1997, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel

Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9713955.

Tarrant Appraisal District Appraisal Review Board, will meet at 2329 Gravel Road, Fort Worth, November 20, 1997, at 9:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9713956.

Meetings Filed October 21, 1997

Ark-Tex Council of Governments, (ATCOG), Executive Committee, met at Mt. Pleasant Chamber of Commerce, 1800 Jefferson, Mt. Pleasant, October 30, 1997 at 2:00 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9713972.

Brazos River Authority, Board of Directors, met at 4400 Cobbs Drive, Waco, October 27, 1997 at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 78714-7555, (254) 776-1441. TRD-9713988.

Central Texas MHMR Center, Board of Trustees, met in Special Called Meeting, at Waldrop Family Cabin, Dam Road, Lake Brownwood, October 25, 1997 at 9:30 a.m. Information may be obtained from David Williams, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574. TRD-9713977.

Central Texas Water Supply Corporation, met with revised agenda, at 4020 Lake Cliff Drive, Harker Heights, October 28, 1997 at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698-2779. TRD-9713979.

Dallas Central Appraisal District, Appraisal Review Board Meeting, met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, October 30, 1997, 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9713968.

Golden Crescent Regional Planning Commission, Board of Directors, met at 568 Big Bend Drive, Victoria, October 29, 1997 at 5:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9713980.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, October 28, 1997 at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 582-2309. TRD-9714000.

Johnson County Central Appraisal District, Appraisal Review Board, met at 109 North Main, ARB Conference Room, Cleburne, October 28 and 30, 1997, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9714002.

Riceland Regional Mental Health Authority, Board of Trustees Education Meeting, met at Rivendell Highway 90A, East Bernard, October 24, 1997 at 9:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9713967.

Wood County Appraisal District, Appraisal Review Board, met at 210 Clark Street, Quitman, October 29, 1997 at 9:00 a.m. Information may be obtained from W. Carson Wages or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9713978.

Meetings filed October 22, 1997

Brazos River Authority, Board of Directors, met with revised agenda, at 4400 Cobbs Drive, Waco, October 27, 1997 at 9:00 a.m.

Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (254) 776-1441. TRD-9714025.

Central Texas Water Supply Corporation, met with revised agenda, at 4020 Lake Cliff Drive, Harker Heights, October 28, 1997 at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698-2779. TRD-9714079.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, October 29, 1997 at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9714056.

Kempner Water Supply Corporation, Subcommittee, met at Highway 190, Kempner Water Supply Corporation offices, Kempner, October 27, 1997 at 4:00 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9714021.

North Central Texas Council of Governments, Executive Board, met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, October 30, 1997 at 12:45 p.m. Information may be obtained from Edwina J. Shires, NCTCOG, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9714028.

San Antonio-Bexar County Metropolitan Planning Organization, Transportation Steering Committee, met at International Conference Center of the Convention Center Complex, (Alamo at Market), San Antonio, October 27, 1997 at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9714024.

Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, October 28, 1997 at 8:30 a.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, 79549, (915) 573-8549. TRD-9714047.

# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Texas Department of Aging

Notice of Intent to offer Opportunities for Public and Private Partnerships and Sponsorships for the *Aging Texas Well Program*.

Notice is given to the public of the intent of the Texas Department on Aging to solicit voluntary support from individuals, and public and private organizations interested in being involved in a new, long-range program called *Aging Texas Well* (ATW).

ATW is a program intended to help prepare Texas for the projected increases in an older population as the result of the maturing baby boom generation, those individuals born between 1946 and 1964. This program was endorsed by the 75th Texas Legislature.

The program has a two-part focus, providing information resources for individual planning, and policy development.

The policy development focus will review and analyze existing public policy areas that will need to be considered in light of an increased older state population and make recommendations for needed policy development and work to implement them into reality.

The individual planning focus will provide informational resources, initially through a promotional brochure and as an Internet web site. This area of the project provides numerous partnership opportunities to help promote the concept of the importance of individual personal responsibility in holistically planning for one's future. The initial focus areas in this regard will be:

**Family** - life transitions and care giving, including the empty nest syndrome (parents finding it difficult to adjust after their children have grown and left home) and the sandwich generation (individuals who find themselves providing care for dependent children and their aging parents at the same time);

**Health** - healthy active living, including fitness and wellness programs;

**Work** - employment options, such as working less than full time, job sharing, temporary work and starting your own business;

**Money** - financial planning, such as income, pensions, investments, taxes, health and long-term care insurance;

**Housing** - what, where, with whom and accessibility, a look at various considerations such as cooperative housing, assisted living and adapting current housing;

**Legal** - estate planning, advanced directives and wills; and

**Mental/Emotional/Spiritual** - meaningful use of time for enjoyment, personal or spiritual growth and enhanced self-esteem, focusing on such areas as life-long learning, volunteerism, community involvement, religious affiliation or spiritual practice

Numerous voluntary partnership and sponsorship opportunities exist in each or all of the topic areas listed above for individuals, and both public and private organizations or companies to help develop and/or distribute information. This could include, but not be limited to: sponsoring the development and distribution of radio, television and print media messages, including purchasing air time and/or paying for print article or advertisement placements; defraying the costs of printing and distribution of written material, including translation services; and being a referral source for information on a particular topic or topics. Both cash donations and in-kind contributions will be considered. Active participating partners in this project will be appropriately acknowledged for their sponsorship whenever possible.

For more information on the *Aging Texas Well* program and a copy of the initial promotion plan, contact: James Grabbs, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711, FAX: (512)-424-6890, Telephone: (512) 424-6840.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713826

Mary Sapp

Executive Director

Texas Department of Aging

Filed: October 17, 1997

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## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of October 10, 1997, through October 21, 1997:

#### FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Army Corps of Engineers - Galveston District; Project No.: 97-0348-F2; Description of Proposed Activity: The applicant proposes to maintenance dredge the Sabine- Neches Waterway - Entrance to Junction with Neches River. Ten options for beneficial use of dredged material were evaluated and found not to have reasonable costs in proportion to their benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to federal approval of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineers - Galveston District; Project No.: 97-0349-F2; Description of Proposed Activity: The applicant proposes to maintenance dredge the Sabine- Neches Waterway - Neches River Channel. Three options for beneficial use of dredged material were evaluated and two were found to have reasonable costs in proportion to their benefits and are proposed to be implemented. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to federal approval of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineers - Galveston District; Project No.: 97-0350-F2; Description of Proposed Activity: The applicant proposes to maintenance dredge the Sabine- Neches Waterway - Sabine River Channel. Two options for beneficial use of dredged material were evaluated and one found to have reasonable costs in proportion to the benefits and is proposed to be implemented. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to federal approval of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineers - Galveston District; Project No.: 97-0351-F2; Description of Proposed Activity: The applicant proposes to maintenance dredge Brazos Island Harbor Channel to Port Isabel. Two options for beneficial use of dredged material were evaluated and found not to have reasonable costs in proportion to their benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to federal approval of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineers - Galveston District; Project No.: 97-0352-F2; Description of Proposed Activity: The applicant proposes to maintenance dredge the Gulf Intracoastal

Waterway Port Isabel Small Boat Harbor. Two options for beneficial use of dredged material were evaluated and found not to have reasonable costs in proportion to their benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to federal approval of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Applicant: U.S. Army Corps of Engineers - Galveston District; Project No.: 97-0353-F2; Description of Proposed Activity: The applicant proposes to maintenance dredge the Gulf Intracoastal Waterway Port Isabel Side Channels. Two options for beneficial use of dredged material were evaluated and found not to have reasonable costs in proportion to their benefits. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to federal approval of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project area and determined the project activities will not adversely impact these CNRAs.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on October 21, 1997.

TRD-9714009

Garry Mauro

Chairman

Coastal Coordination Council

Filed: October 21, 1997



## Comptroller of Public Accounts

### Notice of Issuance of Request for Offers

The Comptroller of Public Accounts (Comptroller) announces its Request for Offers (RFO) to procure an advanced database system (ADS) for enhanced tax collection and related services. The Comptroller solicits offers for the ADS through issuance of a RFO pursuant to the "Catalogue Purchase Procedures" mandated for acquisition of automated information systems and related services in accordance with the Texas Government Code, Chapter 2157, and Chapter 2254, Subchapter B.

The RFO is issued pursuant to authority granted in Senate Bill (S.B.) 461, 75th Texas Legislature, Regular Session (1997). The fiscal note for S.B. 461 anticipates that the use of advanced technology and enhanced data-matching techniques will increase current state tax collections by \$43.1 million by August 31, 1999. The purpose of this RFO is to increase state tax collections by at least this amount over the 1998-1999 biennium. The increased tax collections must come from taxes paid to the state's General Revenue Fund.

Catalogue Purchase Procedures: Each Offeror desiring to submit an offer in response to the RFO must have received approval from the General Services Commission (GSC) as a "qualified information systems vendor" for the products and services being requested in the RFO. To be considered for such approval, Offerors must first

submit an application (including catalogue) to the GSC for approval consideration. The application can receive GSC approval only if all criteria established by the statute governing the catalogue procurement procedures are met. Once approved, the Offeror receives a letter from GSC notifying it of the approval. Once designated as a qualified information systems vendor, the Offeror must publish and maintain a catalogue listing all products and services available for purchase. If not approved, the applicant will receive a letter notifying the applicant of the reason(s) for disapproval. The Comptroller intends to consider the catalogue offers of qualified information systems vendors only.

Contact: Parties interested in submitting an offer in response to the RFO should contact David R. Brown at the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFO. The RFO will be available for pick-up on Friday, October 31, 1997, between 1:00 p.m. and 5:00 p.m. central zone time, and during normal business hours thereafter.

Mandatory Letter of Intent to Submit an Offer: Parties interested in submitting an offer in response to the RFO must submit a mandatory Letter of Intent to Submit an Offer (Letter of Intent), which must be received at the previous listed address no later than 4:00 p.m. central zone time on Friday, November 14, 1997. Letters of Intent that are not timely received will not be considered. The Letter of Intent must identify the entity that may submit an offer in response to this RFO, and must be signed by an official of that entity. Responses to questions and other information pertaining to this procurement will be sent only to potential Offerors who submit a Letter of Intent. A potential Offeror must include its fax number in the Letter of Intent to provide for the expedited transmission of information pertaining to this procurement. The Letter of Intent must be addressed to David R. Brown at the address shown previously. Potential Offerors are encouraged to fax Letters of Intent to (512) 475-0973 to ensure timely receipt.

Written questions concerning the RFO must be received at the previous address no later than 4:00 p.m. central zone time on Friday, November 14, 1997. Written questions that are not timely received may not be answered. The written questions must be addressed to David R. Brown at the address shown previously. Potential Offerors are encouraged to fax their written questions to (512) 475-0973 to ensure timely receipt.

Closing Date: Offers in response to the RFO must be received in the office of the Comptroller's Legal Counsel no later than 5:00 p.m. (CZT), on Monday, December 8, 1997. Offers must be received at the previously referenced address and must be in both hard copy form and on a 3.5" floppy diskette. Offers received after this time and date will not be considered.

Qualified Offerors may be required to make oral presentations to Comptroller staff in Austin between December 8, 1997, and December 12, 1997.

The Comptroller anticipates commencing negotiations with one or more qualified vendors on or about December 15, 1997.

Award Procedure: All offers will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFO. The committee will determine which offer best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. An Offeror may be asked to clarify its offer.

The Comptroller anticipates awarding a contract on or about December 22, 1997.

The awarded vendor will be expected to commence work on this project on or about January 12, 1998.

The Comptroller reserves the right to accept or reject any or all offers submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFO. Neither this notice nor the RFO commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714043

Walter Muse

Legal Counsel

Comptroller of Public Accounts

Filed: October 22, 1997



### Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for hiring a consultant to assist the Comptroller in conducting a study to determine the number and type of fraudulent claims and overpayments paid by the state's publicly funded health care programs including Medicaid, workers' compensation for state employees, and the Employees Retirement System's health care benefits program. This study is authorized under the Government Code, §403.026.

This study will require in-depth claims analysis and extensive interviews with providers and patients. The successful Proposer will develop a specific strategy for selecting a random sample of recent medical claims to permit accurate generalization to the entire population covered under the study. The successful Proposer also will survey patients in the sample to determine if the services identified on their claims were in fact delivered and whether they were delivered in the manner described on the claims. Information resulting from data analysis and survey or questionnaire results then will be categorized by factors such as services not delivered and services delivered but billed inappropriately. This information should produce the first clear picture of the type and magnitude of fraud and overpayment problems faced by Texas state agencies.

Contact: Parties interested in submitting a proposal should contact David R. Brown at the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the previous referenced address on Friday, October 31, 1997, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4:00 p.m. (CZT) on November 10, 1997.

Qualified Proposers may be required to make oral presentations to Comptroller staff in Austin between December 15, 1997, and December 19, 1997.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 4:00 p.m. (CZT), on December 12, 1997. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will make a recommendation to the Comptroller. The Comptroller

will then make the final decision. Proposers may be asked to clarify its proposal.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract. The anticipated schedule of events is as follows: Issuance of RFP - October 31, 1997, 4:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due - November 10, 1997, 4:00 p. m. (CZT); Proposals Due - December 12, 1997, 4:00 p.m. (CZT); and Contract Execution - January 5, 1998; Commencement of Work - January 12, 1998; Completion of Project - July 31, 1998.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714042  
Walter Muse  
Legal Counsel  
Comptroller of Public Accounts  
Filed: October 22, 1997

## Office of the Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 10/27/97 - 11/02/97 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 10/27/97 - 11/02/97 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 11/01/97 - 11/30/97 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 11/01/97 - 11/30/97 is 10% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713969  
Leslie L. Pettijohn  
Commissioner  
Office of the Consumer Credit Commissioner  
Filed: October 21, 1997

## Texas Credit Union Department

### Application(s) to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a name change was received for Carnation Employees Credit Union, Houston, Texas. The proposed new name is Oak Farms Employees Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713985  
Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: October 21, 1997

### Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Educators Credit Union, Waco, Texas to expand its field of membership. The proposal would permit owners and employees of Central Texas Corrugated, Inc., 7200 Mars Dr., Waco, TX, its subsidiaries, affiliates and successors, and their families to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of SAI Software Consultants, Inc. to be eligible for membership in the credit union.

An application was received from Texas Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of Jeffrey W. Hunt Insurance Agency to be eligible for membership in the credit union.

An application was received from United Heritage Credit Union, Austin, Texas to expand its field of membership. The proposal would permit members of the Sam's Club locations in Austin, Texas to be eligible for membership in the credit union.

An application was received from Texas Bay Area Credit Union, Pasadena, Texas to expand its field of membership. The proposal would permit employees of Equistar Chemicals, LP (formerly Lyon-dell) to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713986  
Harold E. Feeney  
Commissioner  
Texas Credit Union Department  
Filed: October 21, 1997

## Texas Department of Criminal Justice

### Request for Qualifications

The Texas Department of Criminal Justice - Facilities Division (TDCJ-ID) announces that it requires Professional Services of a qualified Electrical Engineer, pursuant to the provisions of the Government Code, Chapter 2254, Subchapter A. The engineer will provide full time support to TDCJ in the areas of project engineering, project planning, design, and construction. This work will be performed on TDCJ Institutional Facilities. Primary areas of emphasis will be on medium and low voltage distribution systems and controls.

The duration of this contract will be for one year with a one year option. To be considered for this service, submittals must be prepared in compliance with the format stipulated in the RFQ Package, and must be received not later than 4:00 p.m. on November 30, 1997. Submittals received after this time will be subject to disqualification. Persons interested in providing this service should fax their request for an RFQ Package to: Contracts Administrator, TDCJ Facilities Division at (409) 294-8753. In case of difficulty in transmitting a fax, call (409) 294-6656. Submittals shall not include a proposed fee or compensation schedule. This service is subject to the Professional Services Act. Submission and participation in the selection process by interested persons shall have no obligation to any person should it develop or use any idea suggested in the course of, or developed in connection with, its efforts to contract as provided herein. All materials submitted become the property of the TDCJ-FD. Questions regarding this Request for Qualifications should be faxed to the number shown previously. Copies of questions and responses which include new information pertinent to the selection process will be forwarded to all persons that have requested RFQ Packages.

Issued in Austin, Texas, on October 21, 1997.

TRD-9714014

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: October 22, 1997



## Texas Commission for the Deaf and Hard of Hearing

### Notice of Public Hearing

#### NEWS RELEASE

TCDHH Commissioners will hold a public hearing from 9:00 to 10:30 am on November 21, 1997 at the Brown Heatly Building, Room 1410, 4900 N. Lamar, Austin. This hearing will provide the public with the opportunity to comment about basic specialized telecommunications devices under the Specialized Telecommunications Devices Assistance Program relative to access to the telephone system for persons who are deaf or hard of hearing.

The public hearing precedes TCDHH's Commission meeting which will be held on the same date, and at the same location, starting at 11:00 am. The public is invited to the Commission meeting.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714049

David E. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Filed: October 22, 1997



### Notice of Request for Information

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) hereby gives notice for Request for Information (RFI). The primary purpose of the RFI is to obtain information regarding various telecommunications equipment available to deaf, hard of hearing, speech impaired, and deaf/blind individuals for accessing telecommunications services. A secondary purpose is to identify potential vendors who are interested in participating in a State of Texas voucher program to assist eligible individuals in obtaining equipment needed for telecommunications access.

During the 1997 legislative session, the Texas Legislature passed S.B. 667, creating the Specialized Telecommunications Devices Assistance Program (STDAP) and designating TCDHH to administer the program. TCDHH will receive applications, determine eligibility and issue a voucher to be used to purchase telecommunications devices for eligible individuals. The voucher must be taken to a vendor registered under this program and used to purchase this equipment. Vendors will be reimbursed the face amount of the voucher, or actual cost of the equipment, whichever is less, through this program.

TCDHH is required to establish a reasonable price for a basic telecommunications device for the deaf. This price will be used to establish the value of the voucher. To this end, TCDHH requests that potential vendors provide information concerning available models of equipment that could be purchased under this program and a price the vendor is willing to offer individuals purchasing this equipment with the voucher.

All equipment purchased under this program must be new. Used or reconditioned equipment is not eligible for the use of the voucher. Please give technical descriptions and specifications for the equipment. You may attach printed data, which should be referenced and identified to the specific sections of the RFI. Respondents are encouraged to list any additional new equipment which may provide beneficial access to the telephone system.

Respondents will be contacted at a later date concerning registration as a vendor for this program, procedures for redeeming the vouchers, and other details of the program. This RFI is for informational purposes only. For further information about this RFI contact Billy Collins, Director of Programs, TCDHH, P.O. Box 12904 Austin, Texas 78711, or call (512) 451-8494. The closing date for the receipt of responses will be 5:00 p.m. November 11, 1997. Enclosed is a self-addressed stamped envelope for your convenience.



[graphic]

[graphic]

Issued in Austin, Texas, on October 22, 1997.

TRD-9714048

David E. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Filed: October 22, 1997



**Deep East Texas Council of Governments**

## Consultant Contract Request for Proposal

The Deep East Texas Council of Governments files this as a Request for Proposal for Technology and Internal Audit Service.

The consultant will provide assistance in installation and maintenance of computer technology. The consultant will also perform an internal audit of fiscal and program operations for efficient and effective uses of resources for which DETCOG is responsible.

Request for Proposals should be sent to DETCOG, 274 East Lamar Street, Jasper, Texas 75951 to the attention of Walter G. Diggles. Proposals should be marked on the outside of the envelope: CONSULTANT RFP. Deadline for submission of proposals is Friday October 31, 1997.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713970

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: October 21, 1997



## Request for Proposal

The Deep East Texas Council of Governments, by authority of the Deep East Texas Local Workforce Development Board, is accepting proposals to operate training programs under Title IIB of the Job Training Partnership Act. The purpose of this Title IIB RFP is to solicit projects to: improve the long-term employability of youth; enhance the educational, occupational, and citizenship skills of youth; increase the employment and earnings of youth; reduce welfare dependency; and assist youth in addressing problems that impair the ability of youth to make successful transitions from school to work, apprenticeship, the military, or post-secondary education and training. All participants must meet Job Training Partnership Act eligibility requirements.

Training must be provided by Texas Education Agency/Texas Higher Education Coordinating Board approved institutions operating within the twelve county Deep East Texas area.

Proposals will be evaluated in terms of the following criteria: service and method of implementation; past performance; project management; local match; cost of service and training staff/individuals served; and other resources. The Deep East Texas Local Workforce Development Board will make the final selections.

In order to ensure that all respondents are provided sufficient assistance in completing proposals, a Bidders Conference will be held on Wednesday, November 5, 1997, at 10:00 a.m. in Room 102 of City Hall, 300 East Shepherd, Lufkin, Texas. Attendance at the Bidders Conference is not required, but is strongly encouraged as technical assistance will be limited to that given at the Bidders Conference.

All proposals must be prepared according to the instructions in the Request for Proposal which can be obtained by contacting; Charlene Meadows, Deep East Texas Council of Governments, P.O. Box 1423, Lufkin, Texas 75902; or 118 South First Street, Lufkin, Texas 75901; or call (409) 634-2247. The deadline for accepting proposals is 5:00 p.m., Friday, January 9, 1998.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714046

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: October 22, 1997



## Texas Education Agency

### Corrections of Error

The Texas Education Agency adopted new 19 TAC §§61.1032. The rule appeared in the October 3, 1997, issue of the *Texas Register*, (22 TexReg 9887).

On page 9887, second paragraph of the preamble, the phrase "In House Bill 5" should read "In House Bill 4."

## Texas Ethics Commission

### List of Late Filers

Listed as follows are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Kristin Newkirk at (512) 463-5800 or (800) 325-8506.

### Deadline: Candidate/Officeholder Semiannual Campaign Finance Report, due July 15, 1997

Kathleen Ballanfant, 5160 Spruce, Bellaire, TX 77401

Burgess Beall, , 5510 Icon St., Austin, TX 78744-3837

Kevin Brady, 616 FM 1960 Rd. W, #325, Houston, TX 77090-0570

Howard Bridges Jr., 434 W. Kiest Blvd. #100, Dallas, TX 75224

Anna L. Cavazos Ramirez, 1307 Wingfoot Loop, Laredo, TX 78041

Chloe N. Daniel, P.O. Box 810570, Dallas, TX 75381-0570

Richard N. Draheim Jr., 275 Henry M. Chandler's Dr., Rockwall, TX 75087

Deborah Dunsinger, 450 El Dorado #1303, Webster, TX 77598

Rodney R. Elkins, 600 N. Pearl St. #2300, Dallas, TX 75201

Dan Engel, 2608 Greenwood, Arlington, TX 76013

Bill Fisher, 3021 Sonora Trail, Ft. Worth, TX 76116-5005

Eileen Flume, 7201 Broadway #226, San Antonio, TX 78209

Mario Garcia, 735 W 10th, Mercedes, TX 78570

Baltazar Garcia, 712 McDaniel, Houston, TX 77022

Thomas L. Gatton, 2320 Southwest Fwy #C, Houston, TX 77098

Michael J. Hardy, P.O. Box 136704, Ft. Worth, TX 76316-0704

Elizabeth C. Jandt, 112 N. Austin St., Seguin, TX 78155

Dennis Jones, P.O. Box 11027, Lufkin, TX 75902

David A. Jones, 733 W. 43rd St., Houston, TX 77018

S. Christopher Larue, P.O. Box 27337, Houston, TX 77227-7337

Raymundo Mancera, 2532 Montana Ave., El Paso, TX 79903

Roman Martinez, 1009 Graceland, Houston, TX 77009

Robert H. Mendoza, P.O. Box 5566, Brownsville, TX 78523-5566

Patrick Metze, P.O. Box 1224, Levelland, TX 79336

William E. Muirhead, 158 Countrywood Est., Cleveland, TX 77327

Alice Oliver-Parrott, 11709 Longleaf Lane, Houston, TX 77024  
Linette Ovard, 701 E Shady Grove Rd., Irving, TX 75060-6024  
Brian A. Quintero, 500 E. San Antonio #203, El Paso, TX 79901  
Fernando R. Ramirez, 2735 Lakeshore Dr., Port Arthur, TX 77640  
Victor Smith, 1423 W. Red Bird Lane, Dallas, TX 75232  
Marie Tarvin-Garland, 4110 Rio Bravo #101, El Paso, TX 79902  
Samuel W. Hudson III, P.O. Box 159072, Dallas, TX 75315-0972

**Deadline: Specific Purpose PAC Semi-Annual Campaign Finance Report, due July 15, 1997**

William E. Muirhead, Muirhead Election Committee, 158 Countrywood Est., Cleveland, TX 77327

**Deadline: County Executive Committee Semi-Annual Campaign Finance Report, due July 15, 1997**

G. Daniel Mena, El Paso County Democratic Party, 3233 N Piedras, El Paso, TX 79930-3703

Richard T. Hudgins, Warton County Republican Executive Committee, P.O. Box 831, Wharton, TX 77488

**Deadline: General Purpose PAC Semi-Annual Campaign Finance Report, due July 15, 1997**

Carla D. Tyler, Coalition For Natural Health, 2120 L St. NW #100 408, Washington DC, 20005

Johnny Atkinson, Committee For Better Education, P.O. Box 612, Goodrich, TX 77335

Helen Cedillo, Dallas Hispanic Women's PAC, 15889 Preston Rd. #2032, Dallas, TX 75248

Enrique M. Barrera, Edgewood PAC, 6435 Buena Vista, San Antonio, TX 78237

Alfred Adask, Equity Under All Law, 9794 Forest Lane #159, Dallas, TX 75243

Kenneth Stinson, Glass, Molders, Pottery, Plastics & Allied, Workers International Union Local Union #284, 208 Eckman, Longview, TX 75602

Doris M. Fears, Houston Federation Of Teachers, 3100 Weslayan #445, Houston, TX 77027

Sherry Griffith, Houston Heights PAC, 626 Al Gregg, Houston, TX 77008

Vidal G. DeLeon, McLennan County Mexican Americans, For Better Government PAC, 16619 Baylor Ave., Waco, TX 76706

H. J. Johnson, Pleasant Wood Pleasant Grove PAC, P.O. Box 150408, Dallas, TX 75305-0408

Pat Stevens, South Denton County PAC, 2025 Aspen Dr., Highland Village, TX 75067

Edward Hickson, Tarrant County Deputy Sheriff's Assn. PAC, 111 N. Houston #211, Ft. Worth, TX 76102

William T. Hilliard, Tarrytown Republican PAC, 3409 Timberwood Circle, Austin, TX 78703

Andy Wimpee, Texas Assn. Of Temporary Services PAC, 17950 Preston Rd. #980, Dallas, TX 75252

Billy Roberts, Texas Coalition Of Black Mayors, P.O. Box 96, Cuney, Texas 75759

John T. McMahan, Texas Waterways Operators PAC, 1980 Post Oak Blvd. #1101, Houston, TX 77056

G. Daniel Mena, Unity 94 El Paso County, 3233 N. Piedras, El Paso, TX 79930-3703

**Deadline: Annual Personal Financial Statement, due June 30, 1997**

Judy Broussard, 2026 Mustang, Levelland, TX 79336

Charles E. Chatman, 2300 W. Taylor St. #1902, Sherman, TX 75090

Diana C. Shaffer, 3330 Fannin, Beaumont, TX 77701

Teri Mata-Pistokache, UT PAN Amer Dept Of Comm D, 1201 W. University Dr., Edinburg, TX 78539

Issued in Austin, Texas, on October 21, 1997.

TRD-9714041

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: October 22, 1997



## General Services Commission

### Request for Qualifications for Selection of Professional Appraisal Firms or Individual

The General Services Commission (GSC), Facilities Construction and Space Management Division (FCSM), P.O. Box 13047, Austin, Texas 78711-3047, hereby issues this request for statement of interest and qualifications (RFQ) for the purpose of selecting one or more professional appraisal firms or individual appraisers for an Indefinite Quantity (IDQ) Contract.

The contract will provide appraisal services through contracts with private providers, for various state agencies, managed through the General Services Commission, FCSM Division, for state owned facilities and buildings throughout the State of Texas.

The initial contract term would be twelve (12) months, with one (1) twelve (12) month extension option exercisable by the State. The contract could be extended thereafter to complete assignments. The contract would not guarantee any amount of work, but would include a not to exceed value.

Appraisal firms which meet the requirements described in this announcement are invited to submit Appraisal Qualifications prior to 3:00 PM, Tuesday November 4, 1997, for consideration to GSC Bid Room 180, General Services Commission, Facilities Construction and Space Management, 1711 San Jacinto Boulevard, P. O. Box 13047, Austin, Texas 78711-3047. Copies of the full RFQ are available by calling Bobby Huston, Director of FCSM at (512) 463-3417.

Selection of appraisal firms will be in accordance with state procedures and GSC rules.

Issued in Austin, Texas, on October 21, 1997.

TRD-9714013

Judy Ponder

General Counsel

General Services Commission

Filed: October 21, 1997



## Request for Qualifications for Selection of Professional Architectural/Engineering and Consulting Services

The General Services Commission (GSC), Facilities Construction and Space Management Division (the "FCSM"), P.O. Box 13047, Austin, Texas 78711-3047, hereby issues this request for statement of interest and qualifications (RFQ) for the purpose of selecting one or more professional architectural/engineering & consulting firms for an Indefinite Quantity (IDQ) Contract.

The contract will provide architectural/engineering & consulting professional services through contracts with private providers, for various state agencies, managed through the General Services Commission, FCSM Division, for state owned facilities and buildings throughout the State of Texas.

The initial contract term would be twelve (12) months, with one (1) twelve (12) month extension option exercisable by the State. The contract could be extended thereafter to complete assignments. The contract would not guarantee any amount of work, but would include a not to exceed value.

A/E firms which meet the requirements described in this announcement are invited to submit Architect/Engineer Qualifications prior to 3:00 PM, Tuesday, November 18, 1997, for consideration to GSC Bid Room 180, General Services Commission, Facilities Construction and Space Management, 1711 San Jacinto Boulevard, P.O. Box

13047, Austin, Texas 78711-3047. Copies of the full RFQ are available by calling Bobby Huston, Director of FCSM at (512) 463-3417.

Selection of A/E firms will be in accordance with state procedures and GSC rules.

Issued in Austin, Texas, on October 21, 1997.

TRD-9714011

Judy Ponder

General Counsel

General Services Commission

Filed: October 21, 1997



## Texas Department of Health

### Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

[graphic]

[graphic]

[graphic]

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation



Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on October 20, 1997.

TRD-9713882

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: October 20, 1997



#### Notice of Proposed Amendment of a Radioactive Material License

Notice is hereby given by the Texas Department of Health (department) that it proposes to amend the following radioactive material license: RW1234 issued by the Texas Natural Resource Conservation Commission (TNRCC) to Chevron Resources Company, agent for Chevron U.S.A., Inc. for the Palangana project located in Duval County, about 5.5 miles north of Benavides, Texas. This amendment would authorize transfer of the license to Rio Grande Resources Corporation (RGR) (mailing address: Rio Grande Resources Corporation, P.O. Box 1000, Hobson, Texas 78117); would appoint a new Radiation Safety Officer; and would delete or modify references and conditions pertaining to certain expired or terminated authorizations.

This action would renumber the license to Radioactive Material License L01234, to reflect the transfer of jurisdiction to the department by the 75th Session of the Texas Legislature. This transfer was effective July 20, 1997.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to the 30 Texas Administrative Code (TAC), Chapter 336, Subchapter G and 25 TAC, Chapter 289, that the licensee has met the standards appropriate to this amendment: a) the applicant, RGR, is qualified by reason of training and experience to use the material in question, for the purpose requested, in such a manner as to protect public health and safety, and the environment; b) the applicant's proposed equipment, facilities, and procedures are adequate to protect public health and safety, and the environment; c) the issuance of the license amendment will not be inimical to public health and safety, nor have a long-term detrimental impact on the environment; d) the applicant has demonstrated financial capability to conduct the proposed activity, including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance (if necessary); and e) the applicant satisfies all applicable special requirements in 30 TAC, Chapter 336, Subchapters C and G. No environmental assessment is necessary for this proposed action, since the department has determined that the proposed action will not have a significant impact on the human environment.

This notice affords the opportunity for a public hearing upon the proposed amendment to the license. The public hearing on the amendment of the license will be held if the department has received written request for hearing no later than 5:00 p.m., 30 days from the date of publication of this notice in the Texas Register, from a person affected. A person affected is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. Any request for hearing must be in writing and

addressed to Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756-3189, and must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license will be amended. Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688, or by visiting the Exchange Building, Texas Department of Health, 8407 Wall Street, Austin, Texas.

Issued in Austin, Texas, on October 17, 1997.

TRD-9714001

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: October 21, 1997



#### Notice of Request for Proposals For Put Prevention Into Practice

**INTRODUCTION:** The Texas Department of Health issues a request for proposals (RFP) for a nine-month consultation grant for Put Prevention Into Practice (PPIP). The main objective of the PPIP grant is to provide consultation, training, and quality assurance monitoring in the area of clinical prevention services to primary care clinical settings in the El Paso metropolitan area and surrounding counties, to facilitate a systems change so that preventive care becomes routine and barriers to receiving preventive care are reduced.

A maximum budget of \$45,000 will be awarded to one applicant.

**PROJECT DATES:** Funds are available for the period beginning December 1, 1997, through August 31, 1998.

**ELIGIBLE APPLICANTS:** Eligible entities are local health departments and not-for-profit organizations having established relationships with primary health care clinics located in the El Paso metropolitan area and surrounding counties. The primary care clinics may include community health centers, primary care residency training programs (e.g., family practice, internal medicine), local health departments, and not-for-profit organizations that currently provide primary health care services on-site.

**SUBMISSION REQUIREMENTS:** The original and three copies must be received by the RFP Evaluation Committee, Adult Health Program/PPIP, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 on or before 5:00 p.m., C.S.T., November 21, 1997.

**REVIEW AND AWARD CRITERIA:** Each application will be screened for minimum eligibility and completeness, as well as satisfactory fiscal and administrative history. Applications deemed ineligible or incomplete, or that arrive after the deadline will not be reviewed.

Eligible, complete applications will be reviewed and scored independently by evaluators, according to the quality and thoroughness of the application and the illustrated potential of the applicant to pro-

vide quality consultation to targeted clinical sites to implement the PPIP system.

Staff of the Adult Health Program will then conduct conference call assessments with as many as three of the sites scoring highest on the written portion of the evaluation. If the results of these are not satisfactory, the staff of the Adult Health Program will conduct conference call assessments with the applicant(s) scoring next highest on the written portion of the evaluation. This process will continue until one appropriate site has been selected.

FOR INFORMATION: For information regarding the presentation or for a copy of the RFP, please contact the Adult Health Program/PPIP, (512) 458-7534.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713982

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: October 21, 1997



## **Texas Department of Housing and Community Affairs**

Notice of Administrative Hearing MHD1998000293H

Thursday, October 30, 1997, 9:00 a.m.

State Office of Administrative Hearing, 1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

### **AGENDA**

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Larry W. Barber

on denial of certificate of registration as a salesperson in accordance with the Texas Manufactured Housing Standards Act, Texas Revised Statutes Annotated Article 5221f, §§7(j)(8) and (k) and 10 Texas Administrative Code, §80.125(j). SOAH 332-97-1899. Department MHD1998000293H.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714019

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 22, 1997



## **Inaugural Endowment Fund Committee**

### **Fund Disbursement Report**

Under the provisions of the Texas Government Code (401.011(f), the Inaugural Endowment Fund Committee filed with the Secretary of State on October 1, 1997 a report detailing expenditures made during the 12 months ending on September 1, 1997.

Disbursements from the fund to the State Preservation Board (two grants), Texas Historical Commission (two grants), and each of 23 rural Texas libraries (\$3,000.00 each) were made in March 1997 in the total amount of \$593,863.00. The State Preservation Board indicates in its report that \$20,224.00 in unexpended funds for the study of the Texas History Museum will be returned to the Inaugural Endowment Fund. The following table lists expenditures as of September 1, 1997. Copies of the report are available from the Committee or at the Office of the Secretary of State, Statutory Documents Section, 1019 Brazos, Austin, Texas 78701, (512) 463-6182.

647-Inaugural Endowment Fund Committee-Figure 1

[graphic]

Issued in Austin, Texas, on October 16, 1997.

TRD-9713974

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Filed: October 21, 1997



**Texas Department of Insurance**

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Superior Vision Services, Inc., a foreign third party administrator. The home office is Dover, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713859  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 17, 1997



The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Professional Financial Advisors, Inc., a foreign third party administrator. The home office is Brentwood, Tennessee.

Application for incorporation in Texas of ERN Administrators, Inc., a domestic third party administrator. The home office is Fort Worth, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713987  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: October 21, 1997



### Texas Natural Resource Commission

Miscellaneous Document Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions  
October 15, 1997

*(Editors note: Due to an error by the Texas Register the heading for Texas Natural Resource Conservation Commission was omitted in the October 24, 1997, Texas Register (22 TexReg 10563). The notices are being republished under the correct heading..)*

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report (EDPR) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to

Texas Water Code (TWC), §7.075, this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 23, 1997**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or consideration that indicate that the consent to the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Default Order is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 23, 1997**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Order and/or the comment procedure at the listed phone numbers; however, comments on the Default Order should be submitted to the TNRCC in writing.

(1) COMPANY: Elmer Keith, Individually; DOCKET NUMBER: 96-1165-PST-E; ACCOUNT NUMBER: 8312; LOCATION: Guthrie, King County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: TWC, Chapter 26 and 30 TAC §§334.50(b)(1)(A), 334.51(b)(2)(A), (B), and (C), and 334.54(d)(1)(B), by failing to provide adequate release detection for operating USTs, by failing to provide tight tight-fill fittings for UST systems by failing to provide spill containment for UST systems, by failing to provide overfill prevention equipment for UST systems, and by failing to properly remove from service a UST that had been temporarily out of service for longer than 12 months; PENALTY: \$10,000; STAFF ATTORNEY: Hodgson Eckel. Litigation Support Division, MC 174, (512) 239-2195; REGIONAL OFFICE: 4650 50th Street Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(2) COMPANY: Faisal Nazir dba Pak N Pay; DOCKET NUMBER: 97-0292-PST-E; ACCOUNT NUMBER: Enforcement ID Number 5501; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant facility; RULES VIOLATED: 30 TAC §§115.242(9), 115.246(1), (3), (4), and (5), 334.7(d)(3), and 334.22(a) and Texas Health and Safety Code, §382.085(b) by failing to post operating instructions conspicuously on the front of each gasoline-dispensing pump equipped with Stage II vapor recovery system, by failing to maintain a copy of the California Air Resources Board Executive Order for Stage II vapor recovery systems and any related components installed, by failing to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, date, and time the equipment was taken out of service, date of repair or replacement, replacement part manufacturer's information, general description of the part location in the system, and description of the problem, by failing to have proof of attendance and completion of Stage II training for each employee and failing to maintain such proof as long as that employee continues to work at the facility, by failing to maintain a record of results of testing conducted at the motor vehicle fuel dispensing facility, by failing to maintain a record of results of the daily inspections conducted at the motor vehicle fuel dispensing facility, by failing to provide an amended registration, and by failing to pay timely annual facility fees;

PENALTY: 1,700; STAFF ATTORNEY: Tracy Harrison, Litigation Support Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: John Dollins and Grover Todd dba Grover Todd Dairy; DOCKET NUMBER: 97-0770-AGR-E; ACCOUNT NUMBER: D084648; LOCATION: Godley, Johnson County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: TWC, §26.121 and 30 TAC §321.31 and §321.35(a), discharging waste and/or wastewater into or adjacent to water in the state without authorization, by failing to maintain adequate facilities to comply with applicable discharge rules and regulations of the TNRCC; PENALTY: \$7,120; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713636

KevinMcCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: October 15, 1997



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions October 15, 1997

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Proposals for Decision (PFDs) from the State Office of Administrative Hearings (SOAH) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the TNRCC may approve these PFDs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed PFDs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **November 23, 1997**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an PFD if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed PFD is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed PFDs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these PFDs should be sent to the attorney designated for each PFD at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 23, 1997**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the PFDs and/or the comment procedure at the listed phone numbers; however, Section 7.075 provides that comments on the PFDs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Allphaz Coatings, Inc.; DOCKET NUMBER: 96-1291-AIR-E; SOAH DOCKET NUMBER 582-97-1204; ACCOUNT NUMBER: OC-0322-V; LOCATION: Rose City, Orange County,

Texas; TYPE OF FACILITY: surface coating and abrasive blasting operation; RULES VIOLATED: 30 TAC §116.115(a) and Texas Health and Safety Code, §382.085(b) by failing to comply with TNRCC Standard Exemption Number 75 and by failing to comply with TNRCC Standard Exemption Number 102; PENALTY: \$9,300; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-3400; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) RESPONDENT: Billy Ekrut dba Ekrut Oil Co.; DOCKET NUMBER: 96-1395-PST-E; SOAH DOCKET NUMBER 582-97-1216; ACCOUNT NUMBER: Enforcement ID Number (EIN) 5049 (formerly E11023), 5050 (formerly E11024), 5051 (formerly E11025), and 5348 (formerly E11026); LOCATIONS: Valley Mills, Bosque County, Texas; Bellmead, McLennan County, Texas; and Crawford, McLennan County, Texas; TYPE OF FACILITY: underground storage tank (UST) facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and §334.51(b)(2)(A), (B), and (C) by failing to provide proper release detection for its UST systems at any of the facilities, by failing to provide proper release detection for the piping associated with USTs at any of the facilities, by failing to provide tight-fill fittings for all UST systems at any of the facilities, by failing to provide spill containment equipment for all UST systems at any of the facilities, and by failing to provide overfill prevention equipment for all UST systems at any of the facilities; PENALTY: \$12,000; STAFF ATTORNEY: Raymond Winter, Litigation Support Division, MC 175, (512) 239-0477; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(3) RESPONDENT: Jim Wafer Oil Co., Inc.; DOCKET NUMBER: 96-0325/0326/0329-PST-E; SOAH DOCKET NUMBER 582-97-0978/0979/0980; ACCOUNT NUMBER: EIN 5490 (formerly E1140); LOCATION: Pecos, Reeves County, Texas; TYPE OF FACILITY: UST facility; RULES VIOLATED: 30 TAC §§334.50(b)(1)(A), 334.51(b)(1)(B), and 334.54(d)(1)(B), by failing to provide proper release detection for its USTs, by failing to provide spill and overfill prevention equipment for its USTs, and by failing to permanently remove from service USTs that have been temporarily out of service for longer than 12 months; PENALTY: \$5,500; STAFF ATTORNEY: Raymond Winter, Litigation Support Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5421, (915) 570-1359.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713637

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: October 15, 1997



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this

case is **November 23, 1997**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code or the Health and Safety Code, the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and **must be received by 5:00 p.m. on November 23, 1997**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC **in writing**.

(1)COMPANY: Ameri-First Auto Sales; DOCKET NUMBER: 97-0402-AIR-E; IDENTIFIER: Account Number DB-4218-N; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.1(c)(2) and the Act, §382.085(b), by offering for sale a motor vehicle in the State of Texas with inoperable required emission control systems or devices; PENALTY: \$400; ENFORCEMENT COORDINATOR: Kevin Cauble, (512) 239-1874; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2)COMPANY: ARCO Chemical Company; DOCKET NUMBER: 97-0530-AIR-E; IDENTIFIER: Account Number HG-1575-W; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(a), Permit Number 2993, Special Condition Number 18, and the Act, §382.085(b), by failing to install an operable thermal combustor for the Propylene Oxide and Styrene Monomer I Unit and by failing to use the thermal combustor; PENALTY: \$9,600; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3)COMPANY: Armando's Paint and Body; DOCKET NUMBER: 97-0574-AIR-E; IDENTIFIER: Account Number EE-1450-B; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: automotive paint and refinishing shop; RULE VIOLATED: 30 TAC §116.115(a) and Standard Exemption 124 and the Act, §382.085(b), by failing to practice good housekeeping, by failing to have filters or filter systems with a particulate control efficiency of at least 90% in all paint booth spray areas, and by failing to use high volume low pressure spray guns when applying coatings; PENALTY: \$500; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633 (915) 778-9634.

(4)COMPANY: Caddo Park Water System; DOCKET NUMBER: 97-0659-PWS-E; IDENTIFIER: Public Water System Number 0430072; LOCATION: Farmersville, Collin County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the Texas Health and Safety Code, §341.031, by failing to submit a water sample from said public water system for copper and lead analysis; PENALTY: \$630; ENFORCEMENT COORDINATOR: Katharine Wheatley, (512) 239-4757; REGIONAL

OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Christian Tabernacle; DOCKET NUMBER: 97-0461-MWD-E; IDENTIFIER: Permit Number 13581-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 13581-001 and the Code, §26.121, by exceeding the ammonia-nitrogen daily average permit parameter; PENALTY: \$3,120; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(6)COMPANY: Circle "C" Construction Company; DOCKET NUMBER: 97-0802-AIR-E; IDENTIFIER: Account Numbers 93-2979-O and 93-4562-O; LOCATION: Kennedale, Tarrant County, Texas, and Argyle, Denton County, Texas; TYPE OF FACILITY: portable cement silos; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by constructing and operating cement silos without obtaining permit authorization prior to construction or meeting the requirements of a permit exemption; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: David Edge, (512) 239-1779; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7)COMPANY: City of Edinburg; DOCKET NUMBER: 97-0464-MWD-E; IDENTIFIER: Permit Number 10503-002; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10503-002 and the Code, §26.121, by exceeding the ammonia-nitrogen daily average permit parameter; PENALTY: \$3,840; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas, 78550-6807, (210) 425-6010.

(8)COMPANY: The City of Edna; DOCKET NUMBER: 97-0167-MWD-E; IDENTIFIER: Permit Number 10164-001; LOCATION: Edna, Jackson County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10164-001 and the Code, §26.121, by failing to comply with the daily maximum ammonia-nitrogen concentration permit limit of ten milligrams per liter; PENALTY: \$11,520; ENFORCEMENT COORDINATOR: Mary Smith, (512) 239-4484; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(9)COMPANY: City of Hughes Springs; DOCKET NUMBER: 97-0488-MWD-E; IDENTIFIER: Permit Number 10415-001; LOCATION: Hughes Springs, Cass County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10415-001 and the Code, §26.121, by exceeding the total suspended solids daily average permit parameter; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10)COMPANY: The City of Kingsville; DOCKET NUMBER: 97-0414-MWD-E; IDENTIFIER: Permit Number 10696-002; LOCATION: Kingsville, Kleberg County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10187-001 and the Code, §26.121, by substantially exceeding the ammonia-nitrogen permit limitation for four consecutive months; PENALTY: \$0; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(11)COMPANY: The City of Lampasas; DOCKET NUMBER: 97-0410-MWD-E; IDENTIFIER: Permit Number 10205-002; LOCATION: Lampasas, Lampasas County, Texas; TYPE OF FACILITY: municipal wastewater treatment plant; RULE VIOLATED: Permit Number 10205-002 and the Code, §26.121, by exceeding the permitted daily average ammonia-nitrogen concentration limit; PENALTY: \$0; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(12)COMPANY: The City of Lytle; DOCKET NUMBER: 97-0333-MWD-E; IDENTIFIER: Permit Number 10096-001; LOCATION: Lytle, Atascosa County, Texas; TYPE OF FACILITY: municipal wastewater treatment plant; RULE VIOLATED: Permit Number 10096-001 and the Code, §26.121, by exceeding their five-day biochemical oxygen demand; PENALTY: \$750; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(13)COMPANY: City of Marlin; DOCKET NUMBER: 97-0335-MWD-E; IDENTIFIER: Permit Number 10110-002; LOCATION: Marlin, Falls County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10110-002 and the Code, §26.121, by exceeding the five-day biochemical oxygen demand daily average concentration limitation; PENALTY: \$11,360; ENFORCEMENT COORDINATOR: Lin Zhang, (512) 239-4497; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(14)COMPANY: City of New Summerfield; DOCKET NUMBER: 97-0336-MWD-E; IDENTIFIER: Permit Number 13585-001; LOCATION: New Summerfield, Cherokee County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 13585-001 and the Code, §26.121, by exceeding the total suspended solids daily average permit parameter; PENALTY: \$2,918; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas, 75701-3756, (903) 535-5100.

(15)COMPANY: The City of Oakwood; DOCKET NUMBER: 97-0409-MWD-E; IDENTIFIER: Permit Number 10586-001; LOCATION: Oakwood, Leon County, Texas; TYPE OF FACILITY: municipal wastewater treatment plant; RULE VIOLATED: Permit Number 10586-001 and the Code, §26.121, by exceeding their permitted five-day biochemical oxygen demand daily loading limit of 13 pounds per day; PENALTY: \$0; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(16)COMPANY: The City of Robert Lee; DOCKET NUMBER: 97-0360-MWD-E; IDENTIFIER: Permit Number 10603-002; LOCATION: Robert Lee, Coke County, Texas; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: Permit Number 10603-002 and the Code, §26.121, by exceeding the ammonia-nitrogen daily average limitation; PENALTY: \$2,880; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903-6326, (915) 655-9479.

(17)COMPANY: Mr. Raul Esquivel; DOCKET NUMBER: 96-1687-PST-E; IDENTIFIER: Enforcement Identification Number 5466 (formerly E11701); LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control according to commission requirements; and 30 TAC §334.51(b)(2)(C), by failing to provide proper overfill prevention equipment for the underground

storage tank (UST) systems; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(18)COMPANY: Hector Garcia; DOCKET NUMBER: 97-0521-OSI-E; IDENTIFIER: Certification Number 1079; LOCATION: Rosenberg, Fort Bend County, Texas; TYPE OF FACILITY: on-site sewage facility installation and repair business; RULE VIOLATED: 30 TAC §285.104 and Certification Number 1079 and the Code, §366.051(c), by installing an on-site sewage facility without obtaining the necessary permits; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19)COMPANY: Mr. Modesto Hernandez; DOCKET NUMBER: 96-1419-PST-E; IDENTIFIER: Enforcement Identification Number 4684 (formerly E11668); LOCATION: Pharr, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.22(a), by failing to pay annual facility fees for the USTs; 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection for the UST systems; and 30 TAC §334.50(b)(2)(A), by failing to provide proper release detection for the pressurized piping associated with the UST systems; PENALTY: \$1,680; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(20)COMPANY: Mr. Modesto Hernandez, dba Triple H Mart; DOCKET NUMBER: 96-1414-PST-E; IDENTIFIER: Enforcement Identification Number 5159 (formerly E11663); LOCATION: Mercedes, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.7(d)(1)(B), by failing to provide written notice to the executive director of a change in operational status of each tank system from in service to temporarily out of service; 30 TAC §334.22(a), by failing to pay annual facility fees for the USTs; and 30 TAC §334.54(d)(1)(B), by failing to permanently remove from service USTs which have been temporarily removed from service for longer than 12 months; PENALTY: \$2,660; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(21)COMPANY: Mr. Modesto Hernandez, dba Triple H Mart; DOCKET NUMBER: 96-1415-PST-E; IDENTIFIER: Enforcement Identification Number 5158 (formerly E11664); LOCATION: Elsa, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.7(d)(1)(B), by failing to provide written notice to the executive director of a change in operational status of each tank system from in service to temporarily out of service; 30 TAC §334.22(a) by failing to pay annual facility fees for the USTs; and 30 TAC §334.54(d)(1)(B), by failing to permanently remove from service USTs which have been temporarily removed from service for longer than 12 months; PENALTY: \$2,380; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(22)COMPANY: Mr. Modesto Hernandez, dba Triple H Mart; DOCKET NUMBER: 96-1416-PST-E; IDENTIFIER: Enforcement Identification Number 5160 (formerly E11665); LOCATION: Alamo, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.7(d)(1)(A), by failing to register the correct size of the USTs at the facility; 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection for the UST systems; 30 TAC §334.50(b)(2)(A), by failing to

provide proper release detection for the pressurized piping associated with the UST systems; and 30 TAC §334.51(b)(2)(C), by failing to provide proper overfill prevention equipment for the UST systems; PENALTY: \$3,780; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(23)COMPANY: Mr. Modesto Hernandez, dba Triple H Mart; DOCKET NUMBER: 96-1417-PST-E; IDENTIFIER: Enforcement Identification Number 4686 (formerly E11666); LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.7(d)(1)(B), by failing to provide written notice to the executive director of a change in operational status of each tank system from in service to temporarily out of service; 30 TAC §334.22(a), by failing to pay annual facility fees for the USTs; 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection for the UST systems; 30 TAC §334.50(b)(2)(A), by failing to provide proper release detection for the pressurized piping associated with the UST systems; 30 TAC §334.51(b)(2)(B), by failing to provide proper spill containment equipment for the UST systems; 30 TAC §334.51(b)(2)(C), by failing to provide proper overfill prevention equipment for the UST systems; and 30 TAC §334.54(d)(1)(B), by failing to permanently remove from service USTs which have been temporarily removed from service for longer than 12 months; PENALTY: \$4,060; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(24)COMPANY: Mr. Modesto Hernandez, dba Triple H Mart; DOCKET NUMBER: 96-1418-PST-E; IDENTIFIER: Enforcement Identification Number 4685 (formerly E11667); LOCATION: Donna, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.22(a), by failing to pay annual facility fees for the USTs; 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection for the UST systems; 30 TAC §334.50(b)(2)(A), by failing to provide proper release detection for the pressurized piping associated with the UST systems; 30 TAC §334.51(b)(2)(B), by failing to provide proper spill containment equipment for the UST systems; and 30 TAC §334.51(b)(2)(C), by failing to provide proper overfill prevention equipment for the UST systems; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(25)COMPANY: Mr. Modesto Hernandez, dba Triple H Mart; DOCKET NUMBER: 96-1420-PST-E; IDENTIFIER: Enforcement Identification Number 4683 (formerly E11669); LOCATION: Elsa, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.22(a), by failing to pay annual facility fees for the USTs; 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection for the UST systems; 30 TAC §334.50(b)(2)(A), by failing to provide proper release detection for the pressurized piping associated with the UST systems; 30 TAC §334.51(b)(2)(B), by failing to provide proper spill containment equipment for the UST systems; 30 TAC §334.51(b)(2)(C), by failing to provide proper overfill prevention equipment for the UST systems; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Mick Wilson, (512) 239-2228; REGION OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(26)COMPANY: Brien and Priscilla Hickman d/b/a Hilltop Mobile Park; DOCKET NUMBER: 97-0634-PWS-E; IDENTIFIER: Public Water Supply Number 0130019; LOCATION: Beeville, Bee County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the Texas Health and Safety

Code, §341.031, by failing to submit a water sample from said public water system for copper and lead analysis; and the Texas Health and Safety Code, §341.041, by failing to pay the public health service fees; PENALTY: \$480; ENFORCEMENT COORDINATOR: Lin Zhang, (512) 239-4497; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(27)COMPANY: IBP, Incorporated; DOCKET NUMBER: 97-0578-IWD-E; IDENTIFIER: Permit Number 01958; LOCATION: Palestine, Anderson County, Texas; TYPE OF FACILITY: cow slaughter and deboning plant; RULE VIOLATED: Permit Number 01958 and the Code, §26.121, by discharging wastewater into or adjacent to any water in the state or by committing another act that has caused or will cause pollution of any state water; PENALTY: \$51,200; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(28)COMPANY: Lee County Fresh Water Supply District Number 1; DOCKET NUMBER: 97-0581-MWD-E; IDENTIFIER: Permit Number 12007-001; LOCATION: Dime Box, Lee County, Texas; TYPE OF FACILITY: municipal wastewater treatment plant; RULE VIOLATED: Permit Number 12007-001 and the Code, §26.121, by exceeding the total suspended solids daily concentration levels; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(29)COMPANY: Loop 1604 Group; DOCKET NUMBER: 97-0413-EAQ-E; IDENTIFIER: None; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: 629 acres of land known as the fund subdivision commercial tract (tract); RULE VIOLATED: 30 TAC §213.4, by allowing unauthorized clearing and/or construction to occur within the confines of the tract without TNRCC approval of a site specific water pollution abatement plan; and 30 TAC §213.5(f)(2), by failing to contact the TNRCC San Antonio Regional Office within 24 hours of discovering on-site recharge features within the confines of the tract; PENALTY: \$18,160; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(30)COMPANY: Martin Realty & Land, Inc.; DOCKET NUMBER: 97-0462-MWD-E; IDENTIFIER: Permit Number 12621-001; LOCATION: Porter, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 12621-001 and the Code, §26.121, by exceeding the ammonia-nitrogen daily average permit parameter; PENALTY: \$2,160; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(31)COMPANY: Robert Moore d/b/a Moore's Mobile Home Park; DOCKET NUMBER: 97-0633-PWS-E; IDENTIFIER: Public Water Supply Number 0150243; LOCATION: Leon Springs, Bexar County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the Texas Health and Safety Code, §341.031, by failing to submit a water sample from said public water system for copper and lead analysis; PENALTY: \$480; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4757; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(32)COMPANY: Northeast Texas Community College; DOCKET NUMBER: 97-0628-MWD-E; IDENTIFIER: Enforcement Identification Number 10218; LOCATION: Mount Pleasant, Titus County, Texas; TYPE OF FACILITY: domestic wastewater treatment plant;



RULE VIOLATED: 30 TAC §305.1(b) and the Code, §26.121, by discharging wastewater into waters of the state without a permit; PENALTY: \$480; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(33)COMPANY: Second Hand Motors; DOCKET NUMBER: 97-0810-AIR-E; IDENTIFIER: Account Number DB-4208-Q; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.1(c)(1) and the Act, §382.085(b), by offering for sale a vehicle in the State of Texas with missing required emission control systems or devices; PENALTY: \$500; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(34)COMPANY: Sharyland Independent School District; DOCKET NUMBER: 97-0638-MWD-E; IDENTIFIER: Enforcement Identification Number 11480; LOCATION: Mission, Hidalgo County, Texas; TYPE OF FACILITY: on-site sewage plants; RULE VIOLATED: 30 TAC §305.42 and the Code, §26.12, by failing to obtain a permit; PENALTY: \$1,344; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(35)COMPANY: Sunbelt Fresh Water Supply District; DOCKET NUMBER: 97-0463-MWD-E; IDENTIFIER: Permit Number 11670-001; LOCATION: Whiteoak Bayou, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 11670-001 and the Code, §26.121, by exceeding the ammonia-nitrogen daily average permit parameter; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(36)COMPANY: Tompkins Coating, Incorporated; DOCKET NUMBER: 97-0619-AIR-E; IDENTIFIER: Account Number HG-0746-D; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: abrasive blasting and surface coating plant; RULE VIOLATED: 30 TAC §116.116(b) and the Act, §382.085(b), by failing to operate as represented in the permit application. Specifically, the scrubber from the blasting area and the filters and fan from the painting area had been removed; PENALTY: \$0; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37)COMPANY: Tosco Marketing Company, d/b/a Circle K Corporation; DOCKET NUMBER: 97-0771-AIR-E; IDENTIFIER: Account Numbers EE-1021-F, EE-1026-S, EE-1101-G, EE-1102-E, EE-1104-A, EE-1745-C, EE-0996-F, and EE-1043-S; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience stores; RULE VIOLATED: 30 TAC §114.13(a) and Agreed Order Number 95-0367-AIR-E and the Act, §382.085(b), by offering for sale gasoline for use as motor vehicle fuel which failed to have the minimum oxygen content of 2.7% by weight; PENALTY: \$25,500; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(38)COMPANY: Webb County; DOCKET NUMBER: 97-0490-MWD-E; IDENTIFIER: Permit Number 13577-001; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 13577-001 and the Code, §26.121, by exceeding the daily average five-day biochemical oxygen demand limit of 20 milligrams per liter; PENALTY: \$6,400; ENFORCEMENT COORDINATOR: Michael

Meyer, (512) 239-4492; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (210) 425-6010.

(39)COMPANY: Willow Run Public Service, Inc.; DOCKET NUMBER: 97-0491-MWD-E; IDENTIFIER: Permit Number 10699-001; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment facility; RULE VIOLATED: Permit Number 10699-001 and the Code, §26.121, by exceeding the ammonia-nitrogen, the five-day biochemical oxygen demand, and the total suspended solids daily average limitations; PENALTY: \$18,600; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

Issued in Austin, Texas, on October 14, 1997.

TRD-9713562

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: October 14, 1997



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions October 15, 1997

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **November 23, 1997**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 23, 1997**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, Section 7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Mr. Darrell B. Boepple; DOCKET NUMBER: 97-0567-PST-E; ACCOUNT NUMBER: Enforcement ID Number (EIN) 4500; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: underground storage tank (UST); RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and 30 TAC §334.51(b)(1)(B) by failing to provide proper release detection and by failing to provide proper spill prevention and overfill control equipment; PENALTY: \$1,200; STAFF ATTORNEY: Patricia Welton, Litigation Support Division,

MC 175, (512) 239-0682; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(2) COMPANY: Jim Spence dba Aunt Annie's Old Fashion Hamburger; DOCKET NUMBER: 96-1460-PWS-E; ACCOUNT NUMBER: PWS Number 170053; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: public drinking water; RULES VIOLATED: 30 TAC §290.106 and Texas Health and Safety Code, §334.033(d) by failing to submit to the commission water samples for bacteriological analysis for August 1995, October through December 1995, April 1996, and June 1996; PENALTY: \$880; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Ronald W. Stumpf; DOCKET NUMBER: 96-1628-MWD-E; ACCOUNT NUMBER: NO TNRCC PERMIT; LOCATION: City of Joshua, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment plant facility; RULES VIOLATED: TWC, §26.121 by operating an unpermitted wastewater treatment plant and by allowing unauthorized discharges of sewage to an unnamed pond on three separate dates; PENALTY: \$26,250; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 765-2519.

(4) RESPONDENT: Sadru N. Din; DOCKET NUMBER: 96-0555-PST-E; ACCOUNT NUMBER: State Office of Administrative Hearings Docket Number 582-97-0255; LOCATION: Highlands, Harris County, Texas; TYPE OF FACILITY: UST facility; RULES VIOLATED: 30 TAC §§115.221, 115.241, 334.50(b)(1)(A) and (B), (2), and (d)(3), 334.74, and 334.76, by failing to conduct investigation and confirmation steps within 30 days of suspected release, by failing to take initial response actions within 24 hours of a release, by failing to provide adequate release detection for the STs, by failing to provide adequate release detection for the piping associated with the USTs, by failing to provide the existing UST systems with spill and overflow prevention control equipment, by failing to provide the commission with written notice of any change in ownership or change in ownership information, by failing to provide Stage I Vapor Recovery equipment for his UST systems, and by failing to provide Stage II Vapor Recovery equipment for his UST systems; PENALTY: \$29,600; STAFF ATTORNEY: Raymond Winter, Litigation Support Division, MC 175, (512) 239-0477; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1456, (713) 767-3500.

(5) COMPANY: Southwest Oil Recycling, Inc.; DOCKET NUMBER: 96-1511-IHW-E; ACCOUNT NUMBER: SWR Numbers 81319, 32641, and 41810; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: used oil transporting and processing facility; RULES VIOLATED: 30 TAC §§335.2, 335.12(a), 335.43, 335.62, and 335.112(a)(9) and 40 Code of Federal Regulations (CFR), §§262.11, 265.194, 265.195, 270.1, and Part 265, Subpart J by receiving and storing hazardous waste in three different tanks without authorization, by accepting shipments of hazardous waste which were not accompanied by a manifest, by failing to obtain the required written assessment addressing the structural integrity and the hazardous waste storage suitability of three different tanks prior to being put into service, by failing to comply with inspection and general operating requirements, and by failing to conduct a hazardous waste determination of the 288 drums of waste being stored on-site; PENALTY: \$11,200; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(6) COMPANY: Southwest Oil Recycling, Inc.; Southwest Environmental Services, Inc.; DOCKET NUMBER: 97-0250-IHW-E; ACCOUNT NUMBER: SWR Numbers 41400, 23721, and 84672; LOCATIONS: Luling, Caldwell County, Texas; Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: used oil transporting and processing facility underground; RULES VIOLATED: 30 TAC §§335.2, 335.12(a), 335.43, 335.112(a)(9), and 335.62 and 40 CFR, §§262.11, 265.194, 265.195, 270.1, and Part 265, Subpart J by receiving and storing hazardous waste in three different tanks without authorization, by accepting shipments of hazardous waste which were not accompanied by a manifest, by failing to obtain the required written assessment addressing the structural integrity and the hazardous waste storage suitability of three different tanks prior to being put into service, by failing to comply with inspection and general operating requirements, and by failing to conduct a hazardous waste determination of the 288 drums of waste being stored on-site; PENALTY: no penalty; small business exemption; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713635

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: October 15, 1997



#### Public Notices

Public Notice: Re-posted Positions - Request for Nominations to Appoint Two Individuals to the Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Natural Resource Conservation Commission (TNRCC) is soliciting nominations for the following two individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council:

1. An elected official from a municipality with a population of 750,000 or more (Un-expired Term Ends August 31, 1999)
2. A registered waste tire processor (Term Ends August 31, 2003)

The Municipal Solid Waste Management and Resource Recovery Advisory Council was mandated by the 69th Legislature (1983) and is composed of 18 members representing various segments of the regulated community; i.e., city and county solid waste agencies, a commercial solid waste landfill operator, solid waste districts/authorities, an environmentalist, city and county officials, a tire processor, a financial advisor, a professional engineer, a solid waste professional, a composting/recycling manager or educator, and two general public representatives.

The Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations to the TNRCC Commissioners on matters relating to municipal solid waste management; recommends legislation to the Commissioners to encourage the efficient management of municipal solid waste; recommends policies to the Commissioners for the use, allocation, or distribution of the planning fund; and recommends to the Commissioners special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas.

Council meetings are held a minimum of four times per year and committee meetings as needed. The meetings usually last one full day and are held in Austin, Texas. Members are not reimbursed for expenses incurred to attend meetings and do not receive financial compensation.

**To nominate an individual:** (a) identify which position the individual is interested in representing and, (b) ensure that the person meets the qualifications.

**Each nominee should:** (a) submit a biographical summary including the individual's experience and qualifications, and (b) submit a letter indicating their agreement to serve, if appointed.

Appointments will be made by the TNRCC Commissioners.

Written nominations are to be received in the TNRCC Municipal Solid Waste Division by 5:00 p.m., on November 7, 1997. Nominations should be directed to: Gary W. Trim, Special Programs Director, Municipal Solid Waste Division, TNRCC, P.O. Box 13087, MC 124, Austin, Texas 78711-3087 or fax to (512) 239-6717. Questions regarding the Municipal Solid Waste Management and Resource Recovery Advisory Council can be directed to Mr. Trim at (512) 239-6708.

Issued in Austin, Texas, on October 15, 1997.

TRD-9713662

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: October 15, 1997



The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of deletion (delisting) a facility from the State Registry (State Superfund Registry) of sites which may constitute an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment.

The site which has been delisted is the Waste Oil Tank Service State Superfund site which was originally placed on the State Superfund Registry list on January 22, 1988 (13 TexReg 427-428). The site is located on a one-half acre lot in north-central Houston near the intersection of Aldine Westfield Road and Hartwick Road (2010 Hartwick Road). The site has been cleared and currently is vacant and enclosed by a chain-link fence with a locked gate. The fence and gate have been inspected and maintained on a monthly basis.

In 1975, the site was developed to operate as a waste oil collection and transfer facility and stored waste oil collected from various sources in the greater Houston area. The primary source of waste oil was gasoline retail stations; however, waste oil was also reportedly collected from nearly every significant waste oil generator in the Houston area. In addition, paint thinner, transformer oil, lubricating oil, diesel fuel, compressor oil, crude-slop, mineral spirits, methyl ethyl ketone, trichloroethylene, xylene, naphtha, spent acid solution, antifreeze, hydraulic oil, solvents with organic residues, and miscellaneous chemicals were handled at the site. Activities at the site decreased in magnitude between 1984 and 1991, and ceased in 1991.

A waste characterization study was completed during July and August, 1995 to characterize the nature and volume of wastes present at the site. Subsequent to the completion of the waste characterization study, a waste removal action was performed during October and November, 1995. A total of 58,476 gallons of oily water, oily water/

sludge, rainwater, and oil and water were removed from the site and either injected into a permitted deep well, properly disposed of at a permitted landfill, or treated. A total of 748 cubic yards of soil, oily sludge and water, concrete and debris were also removed and properly disposed of at a permitted landfill. A total of sixty five 55-gallon drums were cleaned, crushed, and combined with the on-site debris and disposed of at a permitted landfill. A previously-unreported 2,000 gallon underground storage tank was removed and cleaned and transported to a recycling center along with 67 used automobile tires.

A remedial investigation work plan was developed and submitted to the TNRCC for review. The purpose of the remedial investigation was to characterize the current condition of the surface soils, subsurface soils, surface water, and groundwater at the site. The scope of work included the collection and analysis of surface and subsurface soils, the installation of groundwater monitoring wells and the collection and analysis of surface water samples from the ditch located directly in front of the site. The remedial investigation work plan was approved by the TNRCC on April 25, 1996.

The remedial investigation was completed and a report dated August 7, 1996, was submitted to the TNRCC for review. Based on an evaluation of all identified media of concern at the site, lead in surface soil and benzene, iron and manganese in groundwater were identified as requiring further evaluation at the site. To further evaluate groundwater, a quarterly groundwater sampling and monitoring program was initiated. The remedial investigation report was approved by the TNRCC on September 30, 1996.

Site risks were evaluated through the preparation of a human health risk assessment which used facts and assumptions to estimate potential adverse effects on human health from exposure to the existing contamination at the site. A draft risk assessment dated December 2, 1996 was prepared and submitted to the TNRCC for review. The draft risk assessment concluded that there were three areas at the site that had concentrations of polynuclear aromatic hydrocarbons (PAHs) above background concentrations in the surface soils. Therefore, on March 10, 1997, a supplemental removal action was conducted in an attempt to remove the surface soils down to background levels in the aforementioned three areas of concern. A total of 30 cubic yards of soil was removed and transported off-site for disposal at a permitted landfill.

Subsequent to the completion of a supplemental removal action report, the human health risk assessment was revised to incorporate current site conditions. The constituent database for surface soils was revised by substituting the results associated with the soil removed during the supplemental removal action with the confirmatory samples. The confirmatory test results indicated that there are surface soils with concentrations slightly above background concentrations but well below residential cleanup standards. The final human health risk assessment dated June 3, 1997, was submitted to the TNRCC for review. The final human health risk assessment concluded the evaluation of potential future exposure of on-site residents or workers to surface soils, subsurface soils, and groundwater indicates the site no longer poses an unacceptable risk to human health and therefore no further action is warranted. The site specific analytical data for the site supports the conclusion that this site is usable for residential development without any further remedial action. A deed recordation has been placed on the site in order to document the levels of constituents which are slightly above background concentrations.

This notice is issued to finalize the delisting process which began on August 8, 1997, when the Executive Director of the TNRCC issued a public notice in the *Texas Register* (22 TexReg 7418) of

TNRCC's intent to delist the Waste Oil Tank site from the List of Sites Proposed For Listing on the State Superfund Registry, following the determination made pursuant to 30 TAC §335.344(c), that the site does not present an imminent and substantial endangerment to public health and safety. The notice (22 TexReg 7418) further indicated that the TNRCC shall hold a public meeting, as required in 30 TAC §335.344(b), if a written request is filed with the executive director of the commission within 30 days, challenging the determination by the executive director made pursuant to 30 TAC §335.344(c). Equivalent publication of this notice (22 TexReg 7418) were also published in the three local newspapers: Houston Chronicle of August 8, 1997, Northeast News of August 5, 1997, and Forward Times of August 6, 1997. The TNRCC did not receive any request for a public meeting from any interested persons during the request period (within 30 days of publication of notice); therefore, the Waste Oil Tank Services, of Houston, Texas, is hereby delisted from the Texas State Superfund Registry. In accordance with §361.188(d) of the Health and Safety Code, a notice was filed in the real property records of Harris County, Texas stating that the facility (Waste Oil Tank Services State Superfund site) has been deleted from the State Superfund Registry.

All inquiries regarding the delisting of the Waste Oil Tank Services State Superfund site should be directed to Barbara Daywood, TNRCC, Community Relations Unit, at 1-800-633-9363.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714045

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: October 22, 1997



## Texas Parks and Wildlife Department

### Request for Proposals for Section 6 Funding

The Texas Parks and Wildlife Department (TPWD) is requesting proposals for fiscal year 1999. The Section 6 grants (money allotted to states from the Endangered Species Act) must concern a species (or a suite of species) that is federally listed as threatened or endangered or that is a federal candidate for listing. For FY 99, we are estimating up to \$120,000 in new project money. Due to the reduced amount of new project funds available, most (but not all) of the money will fund TPWD projects.

General TPWD priorities for proposal selection include; 1) projects that contribute to conservation solutions with an emphasis on public lands; 2) projects that contribute technical assistance information that can be used by landowners and managers; and 3) projects that generate new education and outreach materials and programs to reach the Texas public. Within the general priorities listed above, a variety of criteria are used to select projects, including the rarity of the species, the degree of threat, whether a void of information exists concerning it, whether the project will accomplish significant recovery for the species, and whether the project will have benefit to more than one species. To assist in developing relevant proposals, the Endangered Resources Branch (ERB) has prepared A Plan for Action to Conserve Rare Resources in Texas, which includes priority ranks and species conservation needs for each major taxonomic group. The Plan is available from the ERB. Additional guidance may be obtained from recovery actions listed in U.S. Fish and Wildlife Service recovery plans.

The amount of funding available for individual projects varies; however, most projects average \$10,000 to \$20,000 per year and 1-4

years in length. Section 6 funds are made available on 3:1 matching basis from the U.S. Fish and Wildlife Service. TPWD requires its contractors to provide the 25% match. The match may be in the form of salaries, in-kind services, etc., and may exceed 25%. TPWD may circulate proposals received (without author's name if requested) for peer review. TPWD may then work with the proposal author to modify the project to both parties' satisfaction.

**Proposal Guidelines.** The proposal should provide the following information:

**Need.** State the problem which needs to be solved wholly or in part by this research/project. Include a brief discussion of the literature review relative to the problem.

**Objective.** State precisely the intended outputs from the effort, indicating the quality and the time of accomplishment.

**Expected Results or Benefits.** Describe how the results will be used and how their use will resolve the need described.

**Approach.** Describe how the research will be carried out. Include the methods(s) to be employed and the schedule to be followed. Also include the name of the principle investigator.

**Location.** Identify where the work will be done.

**Estimated Cost.** Provide the estimated cost, by year, for completion of the objective.

Deadline for receipt of proposals is November 30, 1997.

Proposals should be sent to: Gareth Rowell, Section 6 Coordinator, Endangered Resources Branch, Texas Parks and Wildlife Department, 3000 IH 35, South, Suite 100, Austin, Texas 78704 (512) 912-7011.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714044

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: October 22, 1997



## Texas Department of Protective and Regulatory Services

### Corrections of Error

The Texas Department of Protective and Regulatory Services proposed an amendment to 40 TAC §725.4020. The rules appeared in the October 17, 1997, issue of the *Texas Register*, (22 TexReg 10269).

On page 10273, the information in §725.4020(e)(8)(C) was incorrect. It should read:

“(C) §720.406(b), (d), and (e) of this title (relating to Administrative Reports and Records);”

### Corrections of Error

The Texas Department of Protective and Regulatory Services proposed amendment and new to 40 TAC §700.513 and §700.522. The rules appeared in the October 10, 1997, issue of the *Texas Register*, (22 TexReg 10116).

On page 10116, the following information in §700.513(a)(1) and (a)(1)(D) should have been bold to indicate new text:

“(a) **Required notification** [Notification] in abbreviated and thorough investigations.

**(1) Who must be notified.** The Texas Department of Protective and Regulatory Services (TDPRS) must notify the following parties about the **findings** [disposition] of an **abbreviated or thorough** investigation **unless one of the exceptions specified in subsection (d) of this section apply:**

**(D) each legal guardian, if one has been appointed, of each alleged victim;"**

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## Public Utility Commission of Texas

### Notice of Application for Approval of Certain Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 8, 1997, for approval of certain depreciation rates pursuant to §§52.002, 52.003, 52.252, and 53.056, of the Public Utility Regulatory Act (PURA), 75th Leg., R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063). A summary of the application follows.

Docket Title and Number: Application of Ganado Telephone Company, Inc. for an Increase in Certain Depreciation Rates, Docket Number 18086 before the Public Utility Commission of Texas.

The Application: In Docket Number 18086, Ganado Telephone Company, Inc. requests approval to increase certain depreciation rates to receive fullcapital recovery of the following accounts: buildings, computers, digital electronic switching equipment, circuit equipment, poles, aerial cable, underground cable, and buried cable-metallic.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before November 19, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713815

Rhonda Dempsey

Rule Coordinator

Public Utility Commission of Texas

Filed: October 17, 1997

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### Notice of Application for Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 20, 1997, for a certificate of operating authority (COA), pursuant to §§54.102-54.111 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Nortex Telcom, L.L.C. for a Certificate of Operating Authority, Docket Number 18135 before the Public Utility Commission of Texas.

Applicant intends to provide a full range of telecommunications services which will include but not be limited to: local exchange service, basic local telecommunications service, internet service, cable television, alarm monitoring, and switched access via the use of its own facilities.

Applicant's requested COA geographic area includes the boundaries of GTE Southwest, Inc.'s Denton exchange.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than November 5, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713992

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 21, 1997

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### Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 29, 1997, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act (PURA), 75th Leg., R.S. ch. 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063). A summary of the application follows.

Docket Title and Number: Application of West Texas Utilities Company to Amend Certificated Service Area Boundaries (Service Area Exception) within Tom Green County, Docket Number 18040 before the Public Utility Commission of Texas.

The Application: In Docket Number 18040, West Texas Utilities Company requests an amendment to its certificated service area boundary in order to provide single-phase electric service to a single customer for a water well in Tom Green County.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713814

Rhonda Dempsey

Rule Coordinator

Public Utility Commission of Texas

Filed: October 17, 1997

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### Notices of Application Pursuant to Public Utility Commission Substantive Rule §23.26

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 29, 1997, pursuant to Public Utility Commission Substantive Rule §23.26 for approval of a new service offering.

Tariff Title and Number: Application of GTE Southwest, Inc. for Approval of a New Service, Caller ID-Name and Number with Anonymous Call Rejection, Pursuant to Public Utility Commission Substantive Rule §23.26. Tariff Control Number 18042.

The Application: GTE seeks to offer a new service called Caller Identification-Name and Number with Anonymous Call Rejection. Both services, Caller ID-Name and Number and Anonymous Call Rejection are currently tariffed offerings. This filing will combine the two services and offer the package at a lower monthly rate for both business and residence class of service customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713763  
Rhonda Dempsey  
Rule Coordinator  
Public Utility Commission of Texas  
Filed: October 16, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 29, 1997, pursuant to Public Utility Commission Substantive Rule §23.26 for approval of a new service offering.

Tariff Title and Number: Application of Contel of Texas, Inc. for Approval of a New Service, Caller ID-Name and Number with Anonymous Call Rejection, Pursuant to Public Utility Commission Substantive Rule §23.26. Tariff Control Number 18043.

The Application: Contel seeks to offer a new service called Caller Identification-Name and Number with Anonymous Call Rejection. Both services, Caller ID-Name and Number and Anonymous Call Rejection are currently tariffed offerings. This filing will combine the two services and offer the package at a lower monthly rate for both business and residence class of service customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713764  
Rhonda Dempsey  
Rule Coordinator  
Public Utility Commission of Texas  
Filed: October 16, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 29, 1997, pursuant to Public Utility Commission Substantive Rule §23.26 for approval of a new service offering.

Tariff Title and Number: Application of GTE Southwest, Inc. for Approval of a New Service, Call Waiting Identification, Pursuant to Public Utility Commission Substantive Rule §23.26. Tariff Control Number 18044.

The Application: GTE seeks to offer a new service called Call Waiting Identification which is a combination of the features offered by Call Waiting and Caller ID. When the subscribing customer is off-hook on another call and another incoming call tries to reach him/her, not only will a tone alert the customer, but Caller ID CPE will also provide the telephone number of that party. There is no additional monthly rate for Call Waiting Identification, but the customer does need to subscribe to both Call Waiting and Caller ID-Number or Caller ID-Name and Number, and have a compatible identification CPE.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713765  
Rhonda Dempsey  
Rule Coordinator  
Public Utility Commission of Texas  
Filed: October 16, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 29, 1997, pursuant to Public Utility Commission Substantive Rule §23.26 for approval of a new service offering.

Tariff Title and Number: Application of Contel of Texas, Inc. for Approval of a New Service, Call Waiting Identification, Pursuant to Public Utility Commission Substantive Rule §23.26. Tariff Control Number 18045.

The Application: Contel seeks to offer a new service called Call Waiting Identification which is a combination of the features offered by Call Waiting and Caller ID. When the subscribing customer is off-hook on another call and another incoming call tries to reach him/her, not only will a tone alert the customer, but Caller ID CPE will also provide the telephone number of that party. There is no additional monthly rate for Call Waiting Identification, but the customer does need to subscribe to both Call Waiting and Caller ID-Number or Caller ID-Name and Number, and have a compatible identification CPE.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 16, 1997.

TRD-9713766  
Rhonda Dempsey  
Rule Coordinator  
Public Utility Commission of Texas  
Filed: October 16, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 6, 1997, pursuant to Public Utility Commission Substantive Rule §23.26 for approval of a new service offering.

Tariff Title and Number: Application of Southwestern Bell Telephone Company (SWBT) for Approval of a New Service, Small Business Builder Service, Pursuant to Public Utility Commission Substantive Rule §23.26. Tariff Control Number 18073.

The Application: SWB seeks approval to introduce a new optional business service. Small Business Builder Service will provide two flat rate business lines, either single lines, multi-lines, or a combination of both and will give the customer the capability to transfer calls and to manage the expense associated with outgoing calls on an intraLATA basis. Small Business Builder Service will be available to all 2-10 line business customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713816  
Rhonda Dempsey  
Rule Coordinator  
Public Utility Commission of Texas  
Filed: October 17, 1997

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 6, 1997, pursuant to Public Utility Commission Substantive Rule §23.26 for approval of a new service offering.

Tariff Title and Number: Application of Southwestern Bell Telephone Company (SWBT) for Approval of a New Service, Business Advantage Service, Pursuant to Public Utility Commission Substantive Rule §23.26. Tariff Control Number 18074.

The Application: SWB seeks approval to introduce a new optional business service. Business Advantage Service will provide two flat rate business lines, either single lines, multi- lines, or a combination of both and will give the customer the capability to know who is calling, to communicate with more than one person at a time, to transfer calls, and to manage the expense associated with outgoing calls on an intraLATA basis. Business Advantage Service will be available to all 2-10 line business customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713817  
Rhonda Dempsey  
Rule Coordinator  
Public Utility Commission of Texas

Filed: October 17, 1997

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Notices of Intent to File Pursuant to Public Utility Commission of Texas Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule §23.27 for an optional features addition to the existing PLEXAR-Custom service for Gulf Coast Broadcasting in Corpus Christi, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for an Optional Features Addition to the Existing PLEXAR-Custom service for Gulf Coast Broadcasting in Corpus Christi, Texas, pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 18127.

The Application: Southwestern Bell Telephone Company is requesting approval for an optional features addition to the existing PLEXAR-Custom service for Gulf Coast Broadcasting in Corpus Christi, Texas. The geographic service market for this specific service is the Corpus Christi local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 20, 1997.

TRD-9713960  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 20, 1997

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule §23.27 for a 30 station addition to the existing PLEXAR-Custom service for Accord Medical Management Inc., in San Antonio, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a 30 Station Addition to the Existing PLEXAR-Custom Service for Accord Medical Management Inc., in San Antonio, Texas, Pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 18130.

The Application: Southwestern Bell Telephone Company is requesting approval for a 30 station addition to the existing PLEXAR-Custom service for Accord Medical Management, Inc. in San Antonio, Texas. The geographic service market for this specific service is the San Antonio local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713989  
Rhonda Dempsey

Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 21, 1997



#### Notice of Petition for Suspension or Modification of the Requirements to Implement Local Number Portability and Suspension of Enforcement of §251(b)(2) of FTA96

Notice is given to the public of the filing with the Public Utility Commission of Texas on September 29, 1997, a petition for suspension or modification of the requirements to implement local number portability and suspension of enforcement of §251(b)(2) of the federal Telecommunications Act of 1996 (FTA96).

**Project Number and Title Number.** Petition of Lufkin-Conroe Telephone Exchange, Inc. for Suspension or Modification of the Requirement to Implement Local Number Portability and for Suspension of Enforcement. Project Number 18046.

**The Application.** Lufkin-Conroe Telephone Exchange, Inc. (Lufkin-Conroe) requests a suspension or modification to the requirements of §251(b)(2) of the federal Telecommunications Act of 1996 because of the expense, technical limitations and the lack of a cost recovery mechanism for implementing this feature. Section 251(b) requires a local exchange carrier to provide local number portability. The Federal Communication Commission has scheduled implementation of local number portability in Lufkin-Conroe's area for March 31, 1998. However §251(f)(2) of FTA96 provides a waiver for a local exchange carrier with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide and that meets the other considerations in that provision.

Lufkin-Conroe seeks a suspension or modification due to technical limitations, the relative high cost of implementation and the current absence of a cost recovery mechanism. Lufkin-Conroe estimates that deployment of this service will require a capital outlay of \$87,000 and anticipates an ongoing annual expense generated by this service of \$453,350. The Federal Communications Commission has stated that it will open a proceeding to determine cost recovery in the near future.

Persons who wish to comment upon the action should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Consumer Affairs at (512) 936-7120, no later than 21 days after notice is given. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713990  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 21, 1997



#### Public Notice of Petition for Declaratory Rulings

Notice is given to the public of a petition for declaratory rulings filed with the Public Utility Commission of Texas (commission) on September 12, 1997, by the Advisory Commission on State Emergency Communications (ACSEC). The commission is authorized to issue a declaratory order upon request by a party, pursuant to §§11.003(12), 14.001 and 14.051 of the Public Utility Regulatory Act, 75th Legislature, Regular Session chapter 166, §1, 1997 Texas

Session Law Service 713, 732, 733 (Vernon) (to be codified at Texas Utility Code Annotated §§11.003, 14.001 and 14.051) (PURA).

**Title and Docket Number.** Petition of the Advisory Commission on State Emergency Communications for Declaratory Rulings. Docket Number 17972.

**The Application.** ACSEC seeks, on behalf of the Panhandle Regional Planning Commission (Panhandle RPC), three rulings construing provisions of PURA, the Texas Health and Safety Code, the 9-1-1 tariffs of GTE Southwest Incorporated (GTE), and Public Utility Commission Substantive Rule §23.97(e)(1)(B). The controversy has arisen in the course of Panhandle RPC's enhanced 9-1-1 tandem implementation with Southwestern Bell Telephone Company, and involves GTE's E-911 tandem routing service.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 21, 1997. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on October 21, 1997.

TRD-9713991  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 21, 1997



#### Request for Comments Related to Permanent Number Portability

Public Utility Commission of Texas (commission) Project Number 16091 was initiated in July 1996 as part of the commission's effort to foster competition in the local exchange service market. The focus of the project has been to implement state and Federal Communication Commission requirements for Permanent Number Portability (PNP). PNP will allow end-use customers to retain their current telephone number when they change local service providers (LSPs). As part of Project Number 16091, a Southwest Region PNP Steering Committee composed of LSPs and incumbent local exchange companies was formed to establish the parameters of PNP. Members of the PNP Steering Committee are in dispute as to the following two issues and have requested commission guidance on those two issues: (1) procedure for opening NXXs within selected switches; and (2) scope of service provider portability. Prior to the commission giving guidance on these two issues, the commission seeks public comment on the following questions:

1. Should every local exchange carrier be required to open all NPA NXX codes within a selected switch (with specific exceptions as outlined by the Network Operations Committee) upon request of a competitive local exchange carrier (LEC) without the need for a letter from each competitive LEC specifying each NPA NXX code requested?
2. Should the scope of service provider number portability be coextensive with wire center boundaries or should the scope extend to rate center boundaries?

Comments on the questions are limited to five pages and should be filed (18 copies) with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin,



Texas 78711-3326, within 7 days after the date of this publication. Comments should refer to Project Number 16091.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714026

Rhonda Dempsey

Rule Coordinator

Public Utility Commission of Texas

Filed: October 22, 1997

## Sam Houston State University

### Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D.C. to represent and assist the University in developing projects deemed important to the University. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for university programs and facilities, a strong bipartisan presence within the firm with considerable experience working with legislative staffs, and a record of substantial success in dealing with the Congress and the Executive Agencies. Excellent skills in university grant and contract awards is necessary. Substantial experience in the development of strategies for corporate participation in university-sponsored development projects especially those relating to environmental and telecommunication issues. Interested parties are invited to express their interest and describe their capabilities by December 12, 1997. The consulting services desired are a continuation of a service previously performed by a private consultant. This contract represents a renewal and will be awarded to the previous consultant unless a better offer is received. The term of the contract is to be from date of award for a twelve month period with options to renew. Further technical information can be obtained from Dr. Billy Covington at (409) 294-3621. Deadline for receipt of proposals is 4:00 p.m. December 12, 1997. Date and time will be stamped on the proposals by the Office of Research and Sponsored Programs. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

#### I. GENERAL INSTRUCTIONS

Submit one copy of your proposal in a sealed envelope to: Office of Research and Sponsored Programs, P.O. Box 2448, Sam Houston State University, Huntsville, Texas 77341-2448 before 4:00 p.m., December 12, 1997. Proposals may be modified or withdrawn prior to the established due date.

#### II. DISCUSSIONS WITH OFFERERS AND AWARD

The University reserves the right to conduct discussions with any or all offerers, or to make an award of a contract without such discussions based only on evaluation of the written proposals. The University also reserved the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled "Scope of Work." The Associate Vice President for Research and Sponsored Programs shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

#### III. SCOPE OF WORK

1. Representation and assistance in developing projects deemed important to the University.

2. Assistance in obtaining funding for University projects.

3. Consulting and representation as directed by Sam Houston State University.

#### IV. EVALUATION

##### A. Criteria for Evaluation of Proposals:

Firms will be evaluated on time and quality of experience in representing and assisting universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firms strategies.

B. Your proposal should include costs for all related expenses.

#### V. TERMINATION

This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserved the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least forty-five days after the scheduled response opening.

Issued in Huntsville, Texas, on October 14, 1997.

TRD-9713946

Dr. B. K. Marks

President

Sam Houston State University

Filed: October 20, 1997

## Teacher Retirement System of Texas

### Consultant Contract Award

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.30.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to assist TRS in carrying out its fiduciary responsibilities and maintaining a qualified plan by monitoring and tracking key federal legislation, analyzing important federal legislative initiatives and monitoring federal executive branch actions relating to public pension and group insurance plans and reporting on these key legislative and administrative developments and other related activities.

TRS executed a contract with Don Kennard whose address is 1005 Congress, Suite 500, Austin, Texas 78701 to provide the services listed in this notice.

Mr. Kennard will be paid \$8,000 for services rendered prior to December 31, 1997. Subsequent to December 31, 1997 the contract will be continued on a month to month basis and Mr. Kennard will be paid \$2,000 for each month the contract is continued. The maximum amount to be paid under the contract if it is extended until August 31, 1998 shall be \$24,000. The contract is effective from September 1, 1997, through December 31, 1997. After December 31, 1997, the contract shall be on a month to month basis not to extend past August 31, 1998.

Issued in Austin, Texas, on October 17, 1997.

TRD-9713935



## Texas Workforce Commission

### Request for Proposals – Capacity-Building Grants for Local Community Employer Coalitions

The Texas Workforce Commission (TWC) invites proposals from organizations for the Capacity-Building Grants for Local Community Employer Coalitions. The purpose of the grant is to expand the capacity of local employers and other community partners to assess dependent care needs and to implement strategies to improve dependent care services to working families through a strong local employer coalition.

#### A. Authorization of Funding

The funds are authorized by Tex. Labor Code, Section 81.0045 (Vernon's Ann. Tx. St. 1996).

#### B. Scope of Work

Grant funds must be used to develop the capacity to build a local employer coalition to improve and expand dependent care services to working families. Support will be provided to the local dependent care provider leadership to develop projects to improve quality of dependent care service delivery. Capacity-building technical support will be provided to the grantee community by TWC through consultants and training for Local Resource Persons.

1. The grantee will be expected to work with local business leaders, employers, the dependent care provider community, and the Local Workforce Development Board.

2. The grantee will organize meetings of employer and dependent care provider groups, in which each group will receive training on strategies to improve and expand dependent care services.

3. A Local Resource Person must be identified by grantee and community leaders to assume training and support activities related to development of a local employer coalition. This person will receive training and support from consultants provided by TWC.

a. The trained Local Resource Person will plan and deliver workshops to build skills needed to complete the community dependent care needs assessment, to finalize the organizational structure of the employer coalition, and to identify and/or start up first projects.

b. A panel of employers, a Local Workforce Development Board member, providers and the grantee will select the Local Resource Person.

c. The Local Resource Person need not be an employee of the grantee.

4. The grantee must provide staff support for the development of a dependent care community needs assessment and the development of an organizational structure for the employer coalition.

5. The grantee must describe a plan for on-going and future support to the employer coalition. Second-year grants to provide continued support to the employer coalition will be available to those communities that are identified as having successfully completed the above tasks.

#### C. Eligible applicants

Applicants for the Capacity-building Grants must meet the following criteria and provide required documentation as requested in the application packet to be considered eligible.

1. Legal entity – any legal entity authorized to do business in Texas is eligible to apply.

2. Must have participated in Clearinghouse-sponsored employer coalition planning process in 1996-1997.

3. The applicant must provide letters of support (or memorandums of understanding) from two employers or business leaders stating their commitment to provide leadership and in-kind support during the organizational development and implementation of a functioning business coalition.

4. The applicant must show long-term commitment to supporting the employer coalition after grant periods are over.

#### D. Available Funding

Proposals for capacity building for employer coalitions may request up to \$18,000. TWC anticipates awarding up to seven Capacity-Building Grants.

#### E. Length of contract

The contract period is January 1, 1998 - August 31, 1998.

#### F. Selection, Notification, and Negotiation Process

TWC anticipates completing the selection process no later than November 28, 1997. Budget and performance statement negotiations will be conducted by TWC in advance of awarding grants. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC has no obligation to award any contracts based on this solicitation.

The deadline for receipt and consideration of a proposal is 4:00 p.m., November 14, 1997. For further information and to order Application Packets, contact the Grants Staff, Texas Work & Family Clearinghouse, 101 E. 15th Street, Room 416T, Austin, TX 78778-0001. Phone 512/936-3228 FAX 512/936/3255.

A list of funded organizations will be published in the Texas Register following contract finalization.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714004

J. Randel Hill

General Counsel

Texas Workforce Commission

Filed: October 21, 1997



### Request for Proposals – Technical Support Grants to Provide Capacity-Building for Local Community Employer Coalitions

The Texas Workforce Commission (TWC) invites proposals from individuals to provide training to community representatives from up to seven Texas cities. Training topics will include capacity building for local employer dependent care coalitions, strategic planning, and assessment of community dependent care needs. The purpose of the grant is to provide consultation and training on methods and strategies for assessment of community dependent care needs and on the improvement of dependent care services targeted toward working families and local employers.

#### A. Authorization of Funding

The funds are authorized by Tex. Labor Code, Section 81.0045 (Vernon's Ann. Tx. St. 1996).

#### B. Scope of Work

Grant funds must be used to provide training and consultation to designated employer groups and community organizations. Grant funds will be used to develop the capacity to construct a functioning local employer coalition whose purpose is to assess, improve, and expand dependent care services to working families. Consultants will provide capacity-building technical support to the grantee community through consultation and training for designated Local Resource Persons and leaders in the local employer and provider community.

1. In conjunction with the local entity that receives the Capacity-Building Grant for Local Employer Coalitions (grantee), local business leaders, employers, the dependent care provider community, and the Local Workforce Development Board, the consultant will plan curricula for workshops to be held in the community within the first three months from the start of funding of the grantee's contract.

2. The consultant will mentor a designee selected by the grantee, employer collaborative members, and leaders of the local provider community in order to prepare training and support activities in the development of a local employer dependent care coalition.

a. The consultant must participate in a two-day statewide training and curriculum planning session to prepare a curriculum for Capacity Building Workshops outlined above. The date for the curriculum planning session will be determined by TWC. The curriculum will cover all necessary aspects of community dependent care needs assessment and implementation of an organizational structure of local employer coalitions.

b. The consultant must travel to assigned city or cities within the months specified by TWC and the local grantee.

c. The consultant may be invited to participate in two training events to the group of local leaders from grantee communities in Austin or some other designated city.

#### C. Eligible Applicants

Eligible applicants will have a Master's degree in Child Development, Early Childhood Education, Human Relations or related fields,

or a Bachelor's degree and five years business experience in related fields. They should have at least two years experience in training trainers. Consultants should have experience in developing, managing, or participating in a working coalition or collaboration involving employers.

#### D. Available Funding

The Clearinghouse may budget a total of up to \$20,000 for up to six consultants for technical support grants to provide capacity-building for local community employer coalitions.

#### E. Length of contract

The contract period is December 1, 1997 - August 31, 1998.

#### F. Selection, Notification, and Negotiation Process

TWC anticipates completing the selection process no later than November 24, 1997. Budget and performance statement negotiations will be conducted by TWC in advance of awarding grants. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC has no obligation to award any contracts based on this solicitation.

The deadline for receipt and consideration of a proposal is 4:00 p.m., November 14, 1997. For further information and to order Application Packets, contact the Grants Staff, Texas Work & Family Clearinghouse, 101 E. 15th Street, Room 416T, Austin, TX 78778-0001. Phone 512/936-3228 FAX 512/936/3255.

A list of funded individuals will be published in the Texas Register following contract finalization.

Issued in Austin, Texas, on October 22, 1997.

TRD-9714005

J. Randel Hill

General Counsel

Texas Workforce Commission

Filed: October 21, 1997

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